COSTS OF ADMINISTERING REPARATION FOR WORK INJURIES IN ILLINOIS

Report and Appendices

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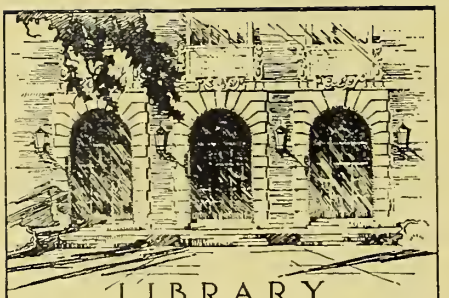
College of Law

University of Illinois
Urbana-Champaign
1952



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COSTS OF ADMINISTERING REPARATION

FOR WORK INJURIES IN ILLINOIS

A pilot study in comparing costs under different systems of reparation, applied to the Federal Employers' Liability Act, and the Illinois Workmen's Compensation Act.

Conducted by authorization of the
Graduate College
University of Illinois

under the direction of

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Table of Contents

Table of Contents (Continued)

LIST OF TABLES

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The directors of this study also owe numerous debts of gratitude to the many persons whose direct or indirect assistance and encouragement have helped to produce this report. Among those who were consulted while it was only an idea, we would like to recognize particularly Dean Albert J. Harno, of the University of Illinois College of Law; Director Phillips Bradley of the University of Illinois Institute of Labor and Industrial Relations; Acting Director Milton Derber of the same Institute; and Professor Clarence Morris of The University of Texas School of Law.

A debt should be recognized also to one statistical study which preceded the present one, and from which we have freely drawn information. This is the survey and report published by the U. S. Railroad Retirement Board in 1947, under the title "Work Injuries in the Railroad Industry 1938-1940."

The diligent and resourceful labors of field investigators have supplied the major portion of the facts in this study. These investigators not only collected facts with imagination and persistence, but analyzed them, and reviewed the work of the directors as it progressed. Named in chronological order of their participation in the work, they are:

Phillip B. Johnson
George E. Hill
Bob A. Hedges
John B. Liston

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Honorable James A. Ronan
Members of the Illinois Industrial Commission

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Clerk of the Circuit Court, Champaign County

Esther Espenshade
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Marjorie Grigsby, Secretary
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Tom M. Garman, Arbitrator
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We would like to thank also the numerous officers and employees of insurance companies and railroad companies who freely gave their time and opened their files to us in relation to their reparation procedures. Our sincere desire to express appreciation here conflicts with the fact that much of the information given us is not ordinarily available to the general public. We know of no way of recognizing adequately their personal contributions without giving undue publicity to essentially internal records of the various companies. We received a very high degree of cooperation from the participating companies, without regard to whether their disclosures would be prejudicial to their institutional interests.

The stenographic staff of the College of Law of the University of Illinois deserve our thanks for their patience with drafts and re-drafts. Stenographers have come and stenographers have gone while this study made its glacier-like progress. Among those who have helped it on its way are Vera Sands, Sue Oehmke, Audrey Smith, Mary Morrisey, and Darlene Aronson.

The final preparation of the report was done by the co-director, Alfred F. Conard. He alone takes responsibility for the accuracy of the translation of statistics and interviews into the substance of this report, and for the many inferences contained in it.

SUMMARY OF REPORT

This report, which will be called the "Illinois Work Injuries Study," is the result of a pilot survey. Its indications are surprising to us, as they may be to others. They are not conclusive, but we believe they represent a sounder basis of belief than any evidence previously put forward on the same subject.

These indications will be challenged, and we feel that they should be. What we ask of our doubting readers is that they attempt to determine for themselves what the true facts are. If this pilot survey stimulates further and more thorough investigations, it will fulfill its highest purpose.

The subjects of our study are the relations of operating expenses, net benefits and total costs to society, in existing systems of repairing workmen's injuries through cash payments. By "net benefits," we mean the cash that reaches a workman's pocket, after his legal expenses are paid. By "operating expenses," we mean workmen's expenses in collecting the cash, employers' expenses in distributing the cash, and taxpayers' expenses in supervising the distribution. "Operating expenses" do not include the expenses of insurance companies, except the expenses of claim adjustment.

The Illinois Study covers two systems of reparation. One of these is the Federal Employers' Liability Act, which governs most injuries to railroad workmen; we call it the "FELA." The other system is the Illinois Workmen's Compensation Act, which governs most injuries to workmen in mercantile and manufacturing industries in Illinois; it will be called "Workmen's Compensation."

The Illinois Study indicates that in the FELA system, about one fifth of the total cost is operating expense. The other four-fifths are net benefits to workmen. In the Workmen's Compensation system, about one third of total cost is operating expense, and about two thirds are net benefit.

In both systems, the taxpayers' expense is a very minor part of total cost--ranging from about half of one percent under the FELA to about two and one half percent under Workmen's Compensation.

The major sources of expense in both systems are the labors of adjusters and attorneys to investigate, negotiate, and litigate claims. Employees' expenses amount to around 7 percent of total cost under the FELA and around 12 percent under Workmen's Compensation. Employers' expenses are larger, but maintain a similar relationship. They are 12 to 15 percent under the FELA, and over 20 percent in Workmen's Compensation.

The indications of the Illinois Study confirm earlier observations on the FELA. They correspond closely to the findings of the monumental report of the Railroad Retirement Board.

With respect to Workmen's Compensation, the indications of the Illinois Study are startling. They flatly contradict the assumptions made for years

by most writers on Workmen's Compensation. These writers have generally assumed that Workmen's Compensation payments are made with insubstantial participation by lawyers, and with a great saving of expense to taxpayers. They appear to have believed that Workmen's Compensation is much more economical for employees, employers, and taxpayers, than the FELA. However, no prior statistical comparisons have been made.

The Illinois Study, making the first known statistical comparison between Workmen's Compensation and the Federal Employers' Liability Act, indicates that the former is at least half again more expensive in terms of operating costs. The excess of expense appears in every element--employees' expense, employers' expense, and taxpayers' expense.

The Illinois Study therefore suggests that if one system is to be substituted for another, more definitive information on their actual operation should be sought. The study suggests that misconceptions may not be confined to the relative costs, but may extend to many other features of both systems.

The annual amounts paid in Illinois alone for work injuries have been estimated at more than twenty millions of dollars a year. National totals would be proportionately greater, and all states have various reparations systems in operation within their borders. Operating expenses of the systems are therefore of sufficient moment to merit careful ascertainment. The Illinois Study illustrates and explains a method of analyzing and comparing reparation systems with respect to their operating costs and their net benefits.

PART I. PURPOSES OF STUDY

A. QUESTIONS RAISED

The Illinois Work Injuries Study is designed to discover and analyze the expense of making reparation for work injuries in Illinois. The annual bill for payments to injured employees, plus the expenses incurred in obtaining and making these payments, runs into tens of millions of dollars.1/ Our questions are, where does the money go, and where does it stop? How much of the total cost gets into the hands of employees, and how much is consumed in the process of settling and litigating claims? Could some of the costs be cut? If so, how much?

Although the questions are of nation-wide significance, this study is limited to very small segments of the national picture. One portion of the study covers reparation under the Federal Employers' Liability Act (the "FELA").2/ Another portion covers payments under the Illinois Workmen's Compensation Act.3/ In each case, we have had to limit our study to a few companies operating in Illinois, on which data could be collected by the means at our disposal.

B. SIGNIFICANCE OF OPERATING EXPENSES

The Balance of Advantage in "Shifting Loss"

Year by year, courts and legislatures impose on citizens increasing numbers and amounts of "liabilities"--duties to make reparation for various kinds of losses. Less frequently certain types of liabilities are abolished--for instance, liabilities for breach of promise of marriage. The merits of these proposals are commonly discussed in terms of "shifting loss" from one person to another.4/

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1. Employers' pay-outs were estimated by the Illinois Department of Labor at more than 21 million dollars for 1949. See Ill. Dept. Labor, Annual Industrial Accident Cost in Illinois (1951), 5.

2. The present "Federal Employers' Liability Act," 45 U.S.C. §§ 51-60, was passed in 1908, after a former act was held unconstitutional, and was upheld by the Supreme Court in the Second Employers Liability Act Cases (1912), 223 U.S. 1. This statute is one of a genus of "employers' liability" acts having two common elements: (1) the employee's right to be paid for a work accident is based on some default of the employer, or of persons in his organization; (2) the employee has this right even though the wrongful act was that of a fellow-servant.

For a classic exposition of "employers' liability" acts in general, see Dodd, Administration of Workmen's Compensation (1936), 11-16.

3. The present Illinois Workmen's Compensation Act (Ill. Rev. St. c. 48, ss 138.1-138.28) is derived from earlier Illinois acts dating back to 1913. Like other "workmen's compensation" acts, this one gives an employee a right to be paid for his work injuries without the necessity of showing that they were caused by any particular person's default; it also frees him completely from the "common law defenses" of fellow-servant rule, assumption of risk, and contributory negligence.

For a general exposition of workmen's compensation acts, see Dodd, Administration of Workmen's Compensation (1936) 27-52.

4. See Prosser, Torts (1941) 26. For an earlier appearance of the "loss-shifting" analysis, see Pound, The End of Law (1914), 27 Harv. L. Rev. 195, 233. Some interesting and under-emphasized distinctions among "shifting," "distributing," "avoiding," and "preventing" loss or risk appear in Douglas, Vicarious Liability and the Administration of Risk (1929), 38 Yale L. J. 584.

Most of these discussions ignore the important fact that the "shifting" of loss inevitably involves the creation of a new loss or expense--the cost to society of administering the "shift." The few discussions which have adverted to the expense element have tended to make an overgrown bogey of it.5/

We believe that an intelligent understanding of the merits of "loss-shifting" requires the building up of a fund of scientific knowledge about the operating expense involved. This study contributes the first few drops to the bucket of information which is needed. It also explores methods of ascertaining operating expenses, and makes several additions to methods disclosed in past observations in the same field.

The Railroad Work Injuries Problem

For forty years, since the Federal Employers' Liability Act became law, groups of workers and managers in the railroad industry have been deadlocked on the question of whether the FELA system should be replaced by a workmen's compensation system. Twenty-six bills for such a change have been considered by twelve Congresses, and the issue continues to be raised.6/

One of the principal arguments for the change is the alleged wastefulness of the FELA. Its defenders respond with charges of wastefulness and other defects in Workmen's Compensation.7/ If a vast difference in the operating expense of the two systems does exist, a convincing demonstration of it could be used to promote progress toward a better system. If there is no such difference, much of the present agitation may be misguided. In that event, the fruitless efforts hitherto directed toward a change of system could perhaps be redirected toward improving the existing system.

This study is designed to show the principal sources of expense in each system, and to present a comparison of the two.

Disability Insurance Proposals

Another development which makes the Illinois Study timely is the proposal of a system of comprehensive disability insurance which would absorb and displace present systems of compensation for work injuries.8/ Proponents of such a system point to the alleged wastefulness of all work injury compensation systems, as compared with the assumed efficiency of more comprehensive systems.

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5. See Prosser, Torts (1941) 25.

6. These bills are listed in an appendix to Pollack, Workmen's Compensation for Railroad Work Injuries and Diseases (1951), 36 Corn. L.Q. 236, 271. Interesting sidelights on the history of the bills are supplied by C. A. Miller, A Federal Workmen's Compensation Act? (1951), 18 I.C.C. Pract. J. 293.

The same two articles present the current demand for a workman's compensation plan. Another workmen's compensation proposal has been made by the Standing Committee of Jurisprudence and Law Reform of the American Bar Association. (1949) 74 A.B.A.Rep. 221, 225.

7. See Richter and Forer, Federal Employers' Liability Act--A Real Compensatory Law for Railroad Workers (1951), 36 Corn. L. Q. 203.

8. See comments of Larson, The Future of Workmen's Compensation (1950), 6 NACCA L. J. 20-23.

Arguments like this are necessarily made in ignorance of the degree of wastefulness either in the existing systems or in the one proposed. The Illinois Study offers new information on comparative costs of existing systems, and discloses sources of expense which may be expected to appear in any substituted system.

C. THE "WASTEFULNESS" OF EMPLOYERS' LIABILITY

For decades, writers on labor problems have denounced the "wastefulness" of employers' liability systems of work accident reparation. Speaking of the Federal Employers' Liability Act, Mr. Justice Frankfurter recently observed:

> "This cruel and wasteful system has long been displaced in industry generally by the insurance principle of workmen's compensation."9/

A few years before, Mr. Justice Douglas had referred to jury trials under the FELA as "crude, archaic, and expensive."10/

The Justices have not cited their sources of information on the expense, inefficiency and waste of the system, but the accusation could be based on evidence from many sources. The most significant study of the subject is the epochal report of the United States Retirement Board, based on statistics for 1938-1940, inclusive, and published in 1947 as "Work Injuries in the Railroad Industry." This report summarized the expense problem as follows:

> "The aggregate administrative cost to employers and employees to process the claims arising out of employee work injuries in 1938-1940 was $3,166,000 per year. Compared to the average annual net benefit to the employees and survivors of about $11,000,000 the administrative costs amounted to 29 percent of the net benefit payments. A compensation system in which administrative cost consumes more than one-fourth of the net payment to its beneficiaries, or as much as 18 percent of its total monetary outlay, would appear to be very expensive to administer. The reason for this high cost is primarily the duplication of costs, inherent in the system, which compels both parties in many instances to employ legal counsel to protect their respective rights..." 11/

Reports on earlier "employers' liability" systems would form the basis for an even higher estimate of administrative cost. The classic reference book on work injuries reparation is Walter F. Dodd's Administration of Workmen's Compensation. It quotes, with apparent acceptance, the findings of the New York Employers' Liability Commission (1910)--

> "....for every $100 paid out by employers for protection against liability to their injured workers, less than $37 is paid to those workmen; $63 goes to pay the salaries of attorneys, claim agents whose business it is to defeat the claims of the injured, to the cost of soliciting business, to the costs of administration, and to profit."12/

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9. Mr. Justice Frankfurter, concurring, in Wilkerson v. McCarthy (1949), 336 U.S. 53, 65.

10. Bailey v. Central Vermont Railway (1943), 319 U. S. 350, 354.

11. U.S. Railroad Retirement Board, Work Injuries in the Railroad Industry 1938-40 (1947), 183. This report will be referred to as the "RRB Survey."

12. Dodd, Administration of Workmen's Compensation (1936) 22, citing New York Employers' Liability Commission, First Report (1910) vol. 1, p. 31. Dodd's work will henceforth be cited as "Dodd."

Dodd further records the report of the Michigan commission on the same subject to the effect that,

> "....forty percent of the premiums paid by employers to liability insurance companies was disbursed on account of litigation."13/

Two standard texts on labor legislation echo the same condemnation. John R. Common's History of Labor in the United States reports the following as one of four "principal charges against employers' liability, amply proved during the period from 1909 to 1913":

> "The system was wasteful; a relatively small percentage of the sums paid by employers reached the injured workers or their dependents."14/

Millis' and Montgomery's "Labor's Risks and Social Insurance" reports of the employers' liability system as it existed before World War I,

> "The system was uneconomical in that only a fraction of what the employer paid out as insurance premiums or in direct settlements found its way into the pockets of victims or their dependents. To cite one of the more conservative research results, 324 New York firms....paid out $192,538, of which $104,643, less attorneys' fees which might well absorb a third, went to victims and dependents."15/

All the foregoing criticisms of employers' liability are from sources generally identified as "pro-labor." Recently, similar complaints have emanated from a group not generally so tagged--the American Bar Association. In 1949, the Association by its House of Delegates voted its approval of a law to repeal the Federal Employers' Liability Act and to substitute rights under the respective state workmen's compensation acts.16/ The committee report underlying this recommendation declared,

> "A case arising under the Federal Employers' Liability Act is many times more expensive to handle, both to litigants and taxpayers, than a case handled under any one of the various state acts. For example, under the Workmen's Compensation Act of the State of New York, the cost of handling 185,003 cases in 1948 was $3,936,885.01, or $21.27 per case. Compare these costs with those estimated by an eminent jurist of the Superior Court of Cook County (Chicago) Illinois who found the average cost to the taxpayers of the average five day jury trial in a Federal Employers' Liability suit was over $1,000.00 per case, and this estimate does not include the cost to litigate."17/

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13. Dodd 22, citing Employers' Liability and Workmen's Compensation Commission of Michigan, Report (1911), 16.

14. Harry Weiss, Employers' Liability and Workmen's Compensation, in Commons (Ed.), History of Labor in the United States (1935), 573.

15. Millis and Montgomery, Labor's Risks and Social Insurance (1938), 193.

16. 74 A.B.A.Rep. (1949), 108, 221, 227.

17. Reports to A.B.A. Committee on Jurisprudence and Law Reform (1949), 12, 14.

D. THE "WASTEFULNESS" OF WORKMEN'S COMPENSATION

The sources which castigate employers' liability laws for their wastefulness generally assume that workmen's compensation laws are free of like faults. The remarks already quoted from Messrs. Justices Frankfurter and Douglas were made in the course of contrasting employers' liability with workmen's compensation, which was apparently assumed to belong in a different category.18/

The Railroad Retirement Board Study, which made an extensive study of costs, and attributed them to the employers' liability system, proceeded to estimate comparative costs under a proposed workmen's compensation system. In this study, although an estimate is made of the costs of operating the compensation commission,19/ no estimate at all is made regarding lawyers and adjusters for plaintiffs and defendants under the proposed system. The report evidently assumes that such costs would be negligible. In discussing how the same accidents would have been treated under a compensation plan, the report states that "payment under it would have been uniform and predictable;" claimants would have had "the certainty of receiving a payment in an amount settled by law."20/ Evidently the reporter believed that litigation, with its attendant expense, would substantially disappear.

Dodd's scholarly work also suggests that the overhead of a compensation system is vastly lower than that of an employers' liability system. Assuming that employers' liability suits are much like other negligence suits, it quotes a study showing that 34 per cent of negligence pay-outs were consumed by attorneys' fees, while only 3 1/3 percent of compensation pay-outs were so consumed.21/ With respect to public costs, the author declares,

> "It is probable that the cost to the public treasury of administering compensation laws in no state approaches anything near the direct cost of the state that would be incurred by re-adopting the principle of negligence, with suits for damages as the remedy of the employee."22/

The standard labor histories make little reference to the operating expenses of the compensation system. By their silence, after lamenting the high overhead of employers' liability, they imply that compensation overhead is relatively minute.

The principal opponent of a workmen's compensation system for the railroad industry, the Brotherhood of Railroad Trainmen, appears to be the first to challenge the assumed economy of compensation systems. A letter from an official of the brotherhood to a University staff member makes the following observations:

> "It has often been argued in favor of workmen's compensation that the removal of fault as a basis for liability constitutes a simplification which would greatly lessen legal technicality and litiga-

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18. Citations in footnotes 9 and 10, above.
19. R. R. B. Survey, 215.
20. Same, 205.
21. Dodd, 740.
22. Dodd, 803.

tion, and indeed diminish the need for lawyers. In this connection I need only call your attention to the Fourth Decennial Digest covering the period 1926 to 1936. The entire series for this period comprises 33 volumes including digests of all court decisions reported in the National Reporter System for the period. Of these 33 volumes, an entire volume in excess of 2000 pages is devoted to the single subject of Workmen's Compensation. Twelve-volume treatises such as that by Schneider bristle with technicalities which arise under these laws. Far from decreasing litigation in the realm of personal injury, the adoption and development of the compensation principle has thrown an increasing volume of cases to the courts."23/

The complaint of excessive expense in workmen's compensation is further detailed in a recent law review article by a government lawyer and a labor union counsel, also defenders of the FELA. The authors declare that employees need lawyers just as much before compensation arbitrators as before courts. They say, "The devious and technical refinements urged by insurance counsel in their efforts to avoid liability under compensation acts would render an ordinary worker who attempted to handle his own case a 'clay pigeon.'"24/ After further examining the control of attorney fees, and the high cost of medical witnesses, the authors conclude,

"The administrative aims of workmen's compensation have not been realized. The employee is not protected against the economic losses due to work-connected injuries.... He does not receive automatic coverage but must fight for his compensation. In the vast majority of cases, being unable to litigate, he settles for less than his legal due. Where he does litigate, the administrative tribunal does not spare him either the necessity or the cost of a lawyer. Furthermore, he must incur all the expenses of proving his injuries by medical witnesses in the same fashion as if he were in court."25/

The same authors proceed to examine the supposed elimination of litigable questions in the compensation system. They say:

"The remaining argument asserted in favor of the compensation acts is is that they permit recovery without fault in contrast to the FELA, which simply permits liability for negligence....

"Many common law concepts, thought to have been abolished by compensation acts, often creep back in some disguised garb under a different name. Note, for example, the street risk cases, acts of God, added risk, violation of rules and law defenses, proximate cause and scope of employment, assaults, horseplay, etc.

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23. Letter dated December 13, 1949, from S. C. Lush, Manager of the Legal Aid Department, Brotherhood of Railroad Trainmen, to P. B. Johnson, Graduate Assistant, University of Illincis.

24. Richter and Forer, Federal Employers Liability Act—A Real Compensatory Law for Railroad Workers (1951), 36 Corn. L. Q. 203, at 226.

25. Same, 229

"Although the compensation acts prescribe absolute liability, without fault, for accidents occurring within the scope of employment, it is obvious that there is much to litigate in the technical word 'accident.' The reports are replete with cases involving the minutiae of what is within the scope of employment -- going to and from work, to and from lunch, and from one part of the employer's plant to another. The long line of common law cases dealing with frolic and detour have found their counterpart in workmen's compensation law."26/

Similar denunciation of the workmen's compensation system is being voiced in England. A contemporary British writer who advocates replacement of "compensation" by "social security," writes:

"Few people could have foreseen ... the fantastic manner in which the legal decisions of the Workmen's Compensation Acts would proliferate year by year so as to form a veritable jungle of case law, through which neither light nor warmth could penetrate.....

"Money, time and professional skill have for nearly half a century been squandered in a scandalously wasteful manner in settling these claims. The fundamental reason is that, instead of a claim for compensation being determined on grounds of public interest, it is opposed and obstructed at every stage by the adverse interest of the employer and his insurance company....."27/

Probably the most carefully considered view of Workmen's Compensation in action is contained in the recently released monograph for the Survey of Legal Profession, by an experienced compensation attorney, Mr. Joseph Bear of Boston. He observed,

"The utopia of speed and simplicity sought by the legislators has eluded the injured worker, and legal representation remains indispensable. In fact, boards or commissions generally have come to frown upon an employee's appearing without counsel, or a layman's attempting to practice before them."28/

Even the Supreme Court, from which have emanated telling strictures on the FELA, has recognized some shortcomings in the compensation system. The late Justice Murphy observed that,

"The statutory phrase 'arising out of and in the course of the employment,' which appears in most of the workmen's compensation laws, is deceptively simple and litigiously prolific."29/

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26. Same, 229-230.

27. Robson, Justice and Administrative Law (1947) 196-197. Quoted with approval by Kenneth C. Davis, Standing to Challenge and to Enforce Administrative Action (1949), 49 Col.L. Rev. 759, 788-89.

28. Bear, Workmen's Compensation and the Lawyer (1951), 51 Columbia L. Rev. 965, at 969.

29. Cardillo v. Liberty Mutual Co. (1947), 330 U.S. 469, at 479.

E. UNEXPLORED ASPECTS OF WASTEFULNESS

The many perspicuous observations on "wastefulness" under employers liability laws and under workmen's compensation leave largely untouched the opportunity to compare, on a parallel basis, the operating costs of the two systems. They call attention to factors of expense, without attempting to measure them either individually or comparatively.

The valuable studies of the early employers' liability commissions offered specific figures on costs of employers' liability systems, although certain objections might be made to their scales of measurement. But they naturally offered no figures on costs under compensation systems, since compensation systems did not then exist. Their observations on now-extinct systems of employers' liability have obviously lost significance for present day purposes.

Of greater timeliness are the observations reported in 1949 by the American Bar Association's Committee on Jurisprudence and Law Reform. Using figures gathered by others, the report makes a striking contrast between the expense to the taxpayers of a single court trial under FELA, and the average taxpayers' expense for handling a Workmen's Compensation case. The single FELA case, tried by a jury, would cost the taxpayers over a thousand dollars, while the average expense for a Workmen's Compensation case was estimated at about twenty dollars.[30] But the comparison is obviously inconclusive, since it might well be that the average taxpayers' cost for an FELA case is less than twenty dollars -- if only one case in a thousand gets a jury trial. The A.B.A. Committee's study simply shows the importance of discovering the expense of each system as a whole.

The most comprehensive and authentic study of operating expenses is the RRB Survey. It contains a careful analysis of aggregate legal expenses for both employers and employees, in the railroad industry. Since this industry is predominately under the FELA, the expenses found are correctly presented as representing FELA expenses, even though they contain some workmen's compensation elements. Hence, the report was unable to present any significant comparison of operating expenses of a workmen's compensation system, and did not purport to do so. It does contain an estimate of "cost of administration" of a compensation system, but this estimate is not analyzed, and appears to refer solely to taxpayers' expenses, without covering employers' and employees' expenses.[31] With respect to FELA, on the other hand, taxpayers' expenses are not estimated at all. These expenses have since taken on increased importance as a result of emphasis on them by the ABA committee.

The objective of the Illinois Study, in relation to earlier ones, is to supply a quantitative measure of the expenses to which its forerummers point, and to analyze them in such a manner that expenses in one system can be compared with expenses in another. In the conduct of the study, reference has been made to the facts high-lighted by the earlier studies, and, important portions of the RRB Survey are adopted as data.

F. WHAT THE ILLINOIS STUDY DOES NOT SIGNIFY

While we believe that the Illinois study has great significance for guiding public policy in regard to reparation for work accidents, we are equally desirous that it should not be taken to demonstrate propositions which are beyond its reach.

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30. Reports to A.B.A. Committee on Jurisprudence and Law Reform (1949), 12, 14.
31. RRB Survey, 215.

Reliability of Findings

We recognize that our observations are triangulated from a very narrow base. If they are doubted, we hope the doubters will conduct their own surveys, making a bona fide effort to determine total cost in both systems compared. This has never before been attempted, chiefly because writers on Workmen's Compensation have been content to assume its superior efficiency. Only by separate and independent researches can the facts be established to the satisfaction of all.

Geographical Application of Findings

At best, the findings of this survey apply only to Illinois. Very different relationships may exist in New York, where the Workmen's Compensation Commission perhaps assumes a greater degree of responsibility in administration. They may be different in Tennessee and Texas, in which the courts play a larger part in administration.

Conclusiveness of Findings

Most of all, we wish to warn that observations on operating expenses should not be the sole or even the principal basis on which a choice should be made between employers' liability systems and workmen's compensation systems. Waste in administration is one of the several aspects in which the traditional literature has assumed that the employers' liability system is inferior. Others are (1) the inadequacy and uncertainty of payments, (2) the delay in payments, (3) the workman's unfitness to manage lump sum payments, and (4) the antagonism engendered by lawsuits.

We have not attempted to appraise these other factors. But it would be unfair to pass them without saying that we have noted factors leading us to doubt that the balance of merit in any of these aspects is all on one side. We suggest that these other factors, as well as "wastefulness," need to be objectively studied without accepting blindly the traditions of workmen's compensation literature.

G. TERMS AND CONCEPTS

Since the Illinois Work Injuries Study follows a new line of inquiry, we have been forced to employ some ideas and phrases whose meanings are not well established by existing literature. Our basic concept is the system of paying cash to workmen to offset in some measure what they lose through work injuries. This we call "reparation." By this term, we do not include the conferring of benefits by furnishing medical treatment. Medical benefits are excluded because they are not under present practices a subject of substantial dispute.

Only one aspect of the reparation system is examined in this study--the aspect of monetary costs, which we call "costs of reparation." We do not examine the system in relation to delays, accuracy of determinations, antagonisms created, or other important factors. But in relation to monetary costs the study is as inclusive as we have been able to make it. It includes the monetary costs to employers, to employees, and to taxpayers.

The costs of reparation are divided for analysis into two parts, of which the first is "net benefits." "Net benefits" means the amount of cash which injured workmen get for their own use. This amount is not the same as the amount of money which employers pay out, for workmen have to pay their lawyers before they can count the cash they have for themselves. "Net benefits" are the amounts of money paid out by employers less the amounts spent by workmen to collect their claims.

The second part of reparation costs is called "operating expenses," which consists of three elements. The first of these elements is the "employees' legal expense," or the amount which workmen pay (chiefly to lawyers) to collect their claims. The second element is "employers' claims expense," or the amount which employers pay their adjusters, lawyers, and experts for helping them decide (or helping public officials to decide) how much should be paid on claims. The third element of operating expenses is the "taxpayers' expense," or the amount paid from the public treasury to the judges, jurymen, commissioners, and other public servants for their work in deciding disputes over injury claims.

We can illustrate the meaning of our concepts by a hypothetical illustration. Jones, a trainman on the Weekawken Line, lost a hand in a work injury. He filed a suit, which was settled on the first day of trial for $1500. His lawyer took $500 as a fee and gave Jones the rest ($1000). The Weekawken Line's adjusters, lawyers, and witnesses were paid $300 for their time on the case, and court officials and jurymen earned $400 for theirs. On these facts, we would analyze the reparation costs in this manner:

Example--Costs of Reparation in Individual Case

		Dollars		Percents
Net benefit ($1500 less $500)		$1000		45.5
Operating Expenses:				
Employee's legal expense	$500		22.7	
Employer's claims expense	300		13.6	
Taxpayers' expense	400		18.2	
Total operating expenses		1200		54.5
Total cost to society of reparation		$ 2200		100.0

The above example analyzes costs in an individual case. The Illinois Study, however, is not directed to costs in individual cases, but to "aggregate" costs in all cases within a segment of the system. To illustrate aggregate costs, we will assume that a hundred workmen lost their hands and each was paid $1500. But Jones' claim was the only one contested, since he alone appeared (to the employer) to have been the guilty cause of his own injury. The other 99 claimants were paid without having to hire a lawyer. We further assume that the employer had low adjustment expenses in the uncontested cases--say $50 per case. Of course the taxpayers incurred no expenses in the uncontested cases.

Aggregate costs of reparation for the group of 100 cases will then be as follows:

Example--Aggregate Reparation Costs

	Dollars		Percents	
Net benefits (100 x $1500, less $500)		$149,500		96.0
Operating expenses				
Employees' legal expense (Jones only)	$ 500		.3	
Employers' claims expense (Jones' case $ 300 Others 4950)	5250		3.4	
Taxpayers' expense (Jones' case only)	400		.3	
Total operating expenses		6,150		4.0
Total costs to society of reparation		$155,650		100.0

This example illustrates the meaning of our concepts in a reparation system. It also illustrates how widely the aggregate expense ratio of a system may depart from the expense ratios of individual cases. In one quite possible case, operating expenses amounted to over 54 percent of total costs. In an equally possible group of 100 cases, aggregate operating expenses amounted only to 4 percent of total costs.

H. OMITTED ELEMENTS

Although we speak of "total cost to society," and "total operating expenses," we are well aware that our list is not all-inclusive. A few of the omitted elements need to be explained.

Medical treatment expense

Some past studies have included the sums spent for medical treatment of injured workers. For some purposes, these amounts are very significant. We have omitted them, because they appeared to have negligible relationship, under present conditions, to the amount of money spent in processing claims. Plaintiffs' and defendants' lawyers agreed that these sums are paid without question, and that they do not form a subject of controversy today.

Medical witness fees, as opposed to medical treatment expense, are included in the survey, since they are incident to administering the cash benefits.

Overpayments

From time to time malingerers successfully pose as injured workmen, and recover sums not actually due them. These payments should hardly be classed with justified net payments, since they do not subserve the purposes of the law. They are rather to be compared with an expense--the unavoidable (or unavoided) incident of making the rightful payments. We have made no allowance for them because we have no reliable information on their extent.

Allocation of general overhead

In using departmental expenses, we have failed to make any allowance for the share of general administrative expense which should be charged to the department. Such overhead is commonly charged by accountants against different segments of revenue, but is not ordinarily allocated among types of expense. Hence, there exists no established mode of allocation which would be useful in this study. Moreover, we do not believe the amount of such allocation would add significantly to the amounts shown.

PART II. DISTRIBUTION OF COSTS UNDER THE FEDERAL EMPLOYERS' LIABILITY ACT

"Typical cases"

Most of the talk about the FELA--whether friendly or hostile--starts out, "Let's take a typical case." The operations of the act are rich with typical cases, and we will offer a few below.

The type of FELA case most talked about is a case which goes through a five-day jury trial, culminating in a verdict and judgment for the claimant in a sum approximating $100,000. Many such cases occur each year. For our first typical case, we will assume that exactly this amount is paid by the employer. In most such cases, the claimant is represented by a lawyer on a contingent fee contract, and the commonest rate of such fees is apparently 33 1/3 percent. So we will assume that the claimant's net benefit is his verdict less his fee, or $66,667.

We have also tried to arrive at the probable expenses of the employer in such a case. Allowing for the time spent by his adjusters, by his operating employees (in giving information), by his trial lawyers, by his expert witnesses, and by his lay witnesses, we have reached a fairly typical employer's claims expense of $2,300.

The taxpayers' expense in such a case is substantial. Allowing for five days of a federal judge's time, and five days of federal jurors' time (with extra jurors on the opening day) we have estimated that taxpayers will contribute $1,600 to the settlement of this case.

Our estimates are tabulated below:

Typical Case No. 1
(Litigated case, with verdict of $100,000)

	Dollars		Percents	
Net benefit to claimant		$66,667		64.2
Operating expenses				
Claimant's legal expense	$33,333		32.1	
Employer's claims expense	2,300		2.2	
Taxpayers' expense	1,600		1.5	
Total operating expenses		37,233		35.8
Total costs to society of reparation		$103,900		100.0

In terms of frequency of occurrence, the litigated, high-verdict case is much less typical than cases without litigation, and with much lower payments. In the company furnishing most of the data for our survey, there were about a thousand FELA payments each year, but only about two a year were tried to final verdict and judgment and only about 20 a year were litigated at all.

The average settlement was not $100,000, but approximately $600. Hence, it seems worthwhile to consider a type of case which typifies a much larger number of instances.

In our Typical Case No. 2, we assume a payment of $600, and no litigation. The claimant is assumed to make his settlement without the aid of a lawyer, as the overwhelming majority of claimants do; there is no "claimant's legal expense." The employer effects settlement with the expenditure of about three days of adjusters' time, valued at $60. Taxpayers incur no expense, since the case is never filed in court. We tabulate the assumptions of this typical case as follows:

Typical Case No. 2
(Unlitigated case, settled for $600)

	Dollars		Percents	
Net benefit to claimant		$600		90.9
Operating expenses				
Claimant's legal expense	None		None	
Employer's claims expense	$ 60		9.1	
Taxpayers' expense	None		None	
Total operating expenses		60		9.1
Total cost to society of reparation		$ 660		100.0

Between the extremes of Typical Case No. 1 and Typical Case No. 2, all sources of permutations are imaginable, and in fact occur. But neither of these cases suggests a third phenomenon which cannot be ignored--the case in which no settlement is made. We now assume a case in which the employer makes a thorough investigation, and decides no reparation is due. The claimant does not hire a lawyer, either because he knows his claim is weak, or because the lawyer he approaches declines to take it on a contingent basis. This gives us our Typical Case No. 3, which also typifies a segment of experience under the FELA.

Typical Case No. 3
(Unlitigated case with no cash payment)

	Dollars		Percents	
Net benefit to claimant		None		0
Operating expenses				
Claimant's legal expense	None		0	
Employer's claims expense	$ 60		100	
Taxpayers' expense	None		0	
Total operating expenses		$ 60		100
Total cost to society		$ 60		100%

The "Aggregate" Approach

It seems obvious after a consideration of these cases, all of which are typical of many actual occurrences, that conclusions based on only one type are valueless. Worse, they are misleading.

No opinion on the FELA merits serious consideration unless it is based on all kinds of operations that take place under the Act, with a due regard to the participation of each kind in the total. The only practical method of presenting a total picture appears to be the presentation of aggregate figures, which is the method adopted in the Illinois Study. Taking a segment of activities under the FELA, we estimate the total amounts of net benefits received, the total amounts paid to claimants' lawyers, the total amounts spent by employers in handling claims, and the total bills paid by taxpayers to administer the Act. We believe that the figures arrived at by these methods offer a more significant basis for judgment than any based on individual cases, separately considered.

SUB-PART A - COSTS IN "COMPANY X" CASES

Of various railroad companies approached, only one proved both willing and able to give us relatively complete figures on the claims which they had paid, and the expenses incurred in connection with them. This company operates a major interstate railway system, with its largest concentration of activities in Illinois. Since the company supplied its figures on a confidential basis, we have called it "Company X." The figures cover the years 1946-1949, inclusive.

The costs of reparation in claims affecting Company X are shown in Table 1, below. Following the table, the text explains more fully what these figures mean. How we derived the figures from original data is not explained here, but is set forth in Appendix II-A.

TABLE 1

COSTS OF REPARATION UNDER FELA IN "COMPANY X" CASES, 1946-1949

Line			Dollars		Percents
1	Net benefits to claimants			$3,507,000	80.2
	Operating expenses:				
2	Claimants' legal expense		$310,000		7.1
	Employer's claims expense				
3	Claims department	$ 372,000			
4	Special investigation	137,000			
5	Attorney	27,000			
6	Total employer's claims expense		536,000		12.3
7	Taxpayers' expense		18,000		0.4
8	Total operating expenses of system			864,000	19.8
9	Total cost to society of system			$ 4,371,000	100.0

Note on Sources: Further statistical background is supplied in Appendix II-A.

Net benefits to claimants

The total amount paid by Company X in work injury settlements over the survey period was $3,817,000 (not shown in Table 1). But those claimants who were represented by attorneys received only the balance after attorney's fees were deducted. We have estimated the total attorneys' fees paid in those cases where attorneys acted, and deducted them from the total amounts the company paid out. The remainder is the figure shown as "Net Benefits to Claimants," --$3,507,000 (Table 1, Line 1).

The right-hand column in Table 1 shows how these net benefits stand in relation to the total expenses, as we estimate them. The percentage is 80.2--a surprisingly high figure in view of reports on employers' liability systems prepared in the pre-Workmen's Compensation period.

What is the accuracy of this estimate? The total of work injury settlements is a figure of high reliability, being taken from the accounts of the Company. The amount of the deduction for claimants' attorneys' fees is an estimate, as explained in the next paragraph.

Claimants' legal expense. Many of the estimates of high "waste" in reparation of injury claims are based on the assumption that all claimants are represented by attorneys. For cases reaching court, this is substantially true. For cases settled out of court, it is not true.

Company X reported that its claimants were represented by attorneys in 80 out of 4980 claims over the survey period. Since these were mostly the larger claims, the total settlements affected by them amounted to 27 percent of the total settlements ($1,032,000). We have assumed that attorney fees were paid in these cases only.

Interviews with company lawyers and with claimants' lawyers showed that fees range from 25 percent to 33 1/3 percent. We had no means of determining what proportion of cases used each rate, and have adopted 30 percent as a round number between the extremes. Applying this percentage to the $1,032,000 of attorney-represented claims, this calculation showed claimants' legal fees of about $310,000. While these fees were 30 percent of the attorney-represented claims, they amounted to only 8.1 percent of all claims paid, and only 7.1 percent of the total cost to society of the reparation system (Table 1, Line 2).

Since most claims are taken by attorneys for a contingent fee, the claimants who obtain no payment pay no attorney fees. Furthermore, the contingent fees which are paid are made to cover such litigation expenses as filing fees, deposition expense, and expert witness fees. Hence, the fees collected on successful claims are believed to represent substantially the entire legal expense of claimants against Company X.

Employer's claims expense. "Employer's claims expense" (lines 3-6) means the entire expense incurred by Company X in 1946 to 1949, inclusive, to handle injury claims under the Federal Employers' Liability Act. It includes the expenses of the fully litigated claims, the expenses of claims which were amicably settled, and the expenses of claims which were not paid at all.

The first item, "claims department expense," is made up chiefly of the salaries of the adjusters who interview accident victims and witnesses, and who persuade (or fail to persuade) the claimants to accept the company's offers of settlement. In addition to the salaries of adjusters themselves, it covers the salaries of the stenographers, file clerks, supervisors, and departmental officers whose work supports that of the adjusters. The department paid settlements on 4980 claims during the four-year period, and handled an unrecorded number of other claims on which no payment was made.

The second item, "special investigation expense," represents money spent for the same purpose, but in a different way. It represents money paid by Company X to outsiders for services performed in investigating cases. Some of it went to public stenographers and notaries public who took down and verified statements of witnesses. Some of it went to photographers who took pictures of the scene of the accident, or of the injured victim. Some went for travel.

"Attorney expense" is the amount paid to lawyers who handled the pleadings, motions, and trials in the litigated cases. This item surprised us by its small size, but careful inquiry tended to confirm its correctness. Although the company paid out settlements on 4980 claims during the four years surveyed, 4900 of the 4980 never reached the legal department; they were "unlitigated." Of the 80 litigated cases, only about 20 reached trial state, and only 5 of these went to judgment.

Attorneys did, of course, prepare for trial cases that were never tried. But the assembling of evidence in Company X is not a matter on which attorneys spend a large amount of time. The numerous and experienced adjusters carry out this job.

Taxpayers' expense. While Company X was paying its adjusters and attorneys to investigate, negotiate, and litigate its claims, taxpayers were also contributing to operate the FELA system. In the few cases which reached court, the time of judges and jurymen was freely consumed in hearing the evidence and in making decisions.

In an average year, about 18 1/2 days of judges' time was taken up in litigating claims against Company X. This is not many, but a judge is expensive. With him goes a retinue of clerks and bailiffs, and an account for traveling and incidental expenses. Using figures prepared by the Administrative Office of United States Courts, we estimated that a day of a federal judge's time in 1950 cost the taxpayers $176.

Jurymen are also expensive. We estimated that about 258 juror days a year were used on claims against Company X, which would have cost $2580 in 1950.

After making rough calculations of total expense at 1950 rates, we made certain adjustments to reflect the change in the general level of court costs which was taking place from 1946 to 1950, and a deduction for the fees which plaintiffs pay to the court clerks on filing their cases. The resulting cost figure is the $18,000 which appears on the table as "Taxpayers' Expense" for claims against Company X.

Some further details on the calculation of this expense estimate, and some alternative methods of calculation, are explained in the appendix. In general these show that our estimate for taxpayers' expense is more likely to be too high than too low. Even so, it amounts to only four-tenths of one per cent of the total estimated cost of the system (Table 1, Line 7). Thus the true figure, if known, could not greatly alter the main conclusions of our study.

SUB-PART B. COSTS IN RAILROAD RETIREMENT BOARD SURVEY CASES

The most comprehensive survey ever made of reparation under the Federal Employers' Liability Act was published by the Railroad Retirement Board in 1947 under the title, "Work Injuries in the Railroad Industry, 1938-1940." We refer to it as the "RRB Survey." It was based on a vastly wider collection of data than was possible for the Illinois Study. Accordingly, we have been at great pains to compare its observations with our own, so far as comparison is possible.

Unfortunately for our purpose, the RRB Survey did not attempt a comparison of operating costs of reparation under the FELA and under Workmen's Compensation. It did compare them in some aspects, such as the waiting period before payment. For the most part, however, it presented elements of expense and other defects of the FELA without attempting to determine to what extent the same faults prevail under Workmen's Compensation. Moreover, the facts regarding FELA were not presented on the aggregate basis which we deem relevant to a comparison of the two systems.

The RRB Survey, however, does contain the most complete information ever developed on any reparation system. We have therefore compared data derived from it with data gathered in the Illinois Study, in such a manner as to make a comparison possible. A summary of the data based on the FELA survey, in a form parallel to the summary of aggregate costs relating to Company X, is presented in Table 2. This table may be compared with Table 1, relating to claims against Company X.

TABLE 2
COSTS OF REPARATION IN RRB SURVEY CASES

Line		Dollars		Percents	
1	Net benefits to claimants		$ 7,621,000		78.1
	Operating expenses				
2	Claimants' legal expense	$ 660,000		6.8	
3	Employers' claims expense	1,421,000		14.6	
4	Taxpayers' expense	49,000		.5	
5	Total operating expenses		2,130,000		21.9
6	Total cost to society of system		$ 9,751,000		100.0

Note on sources of Table 2. The derivation of figures in Table 2 is explained in Appendix II-B. This appendix also presents an alternative method of calculating costs from the RRB Survey which yields results varying only slightly from those above.

The figures from the RRB Survey (in Table 2, above) present an interesting comparison with the figures from Company X, shown earlier (in Table 1). Their similarity is striking when we remember that the RRB figures were collected from about 600 companies, for the years 1938-1940, while the Company X figures derive from only one company, for the years 1946-1949.

In the Company X cases, the net-benefit ratio was 80.2 percent of total cost. In the RRB cases, it is 78.1 percent of total cost. Looking at the same relationship from the other side, we have an operating cost ratio of 19.8 percent in Company X cases, and a corresponding ratio of 21.9 percent in the RRB Survey cases.

The parallelism follows through to the elements of cost as well. For employees' legal expense we have a ratio of 7.1 percent in Company X cases, and of 6.8 percent in RRB Survey cases. For employers' claims expense, we have 12.3 percent for Company X and 14.8 percent for RRB. Finally, the taxpayers' expenses are estimated at 0.4 percent for Company X cases, and at 0.5 percent for RRB Survey cases.

Considering the probable margin of error in all our figures, there is no significant difference between the indications of the RRB Survey for 1939-1940, and our survey of Company X for 1946-1949. Whichever set of figures we take, we may approximate expenses of the system in these round fractions:

Net benefits:	Four-fifths of total cost
Operating expenses:	One-fifth of total cost
Employee's expenses:	One-fourteenth of total cost
Employers' expenses:	One-seventh of total cost
Taxpayers' expenses:	One two-hundredth of total cost

SUB-PART C. SOURCES OF EXPENSE UNDER THE FELA

What makes the settlement of injury claims as expensive as it is? Although we have already shown the principal categories of expense, something more can be shown about the activities which occasion the costs, and the underlying facts which cause these activities to be undertaken.

Adjustment1/

Adjusters' activities can be divided into three main elements: (1) Negotiating for settlement; (2) discovering the facts; (3) preparing evidence with which to resist a claim, if litigated. But it is impossible to make a sharp separation among these elements. A discussion on the settlement figure may elicit information not otherwise obtainable on the facts on injury. The systematic discovery and recording of facts is rarely separable from the procurement of evidence, although some parts of the procedure, like obtaining a deposition, are clearly of the latter category.

Despite the difficulties of segregation, two supervising claims agents representing different companies were willing to estimate the time given to negotiation as opposed to investigation and evidence gathering. One ("Q") said 20-25 percent; the other ("R") said 50 percent. None attempted to apportion time between discovering the facts ("investigation") and obtaining evidence of them.

Our discussions led us to conclude that the three functions of negotiation, investigation, and evidence-gathering are as nearly equal as the attainable accuracy of measurements, and that they cover substantially all the activity known as "adjustment."

This analysis of adjustment activities leads to another question. Why is so much time spent negotiating, investigating, and evidence gathering? What is negotiated, investigated, and gathered?

In order to explore this problem, we placed the possible subjects of interparty dispute in five categories, as follows:

1. Procedural questions
2. Jurisdictional questions
3. Circumstances of the accident
4. Extent of injury
5. Prospective earnings lost

For one series of inquiries, the first two categories were combined under the name "technical questions."

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1. See also the informative discussion of "Administration of liability acts by a process of bargaining," in the RRB Survey, pp. 47-51.

In regard to these categories, we asked two questions:

(1) In preparing for trial, what proportion of your time is devoted to each of these topics?

(2) In attempting to settle, in what proportion of cases is each topic a major cause of disagreement?

The conformance of the answers was striking. In response to the question regarding time spent, the following were the answers of two claim agents representing different companies.:

Time Spent	Claim Agent "Q"	Claim Agent "R"
Technical questions	Negligible	Up to 10%
Circumstances of accident	60%	60%
Extent of injury	10%	20%
Prospective earnings	5%	10%
Unallocated	25%	---

In response to the question regarding major causes of disagreement, a similar parallelism was shown, as follows:

Subjects of Disagreement	Claim Agent "Q"	Claim Agent "R"
Procedural questions	Up to 5%	1%
Jurisdictional questions	Up to 5%	1%
Circumstances of accident	10%	5%
Extent of injury	75%	90%
Prospective earnings	Up to 5%	3%

These estimates gain added significance when compared with the answers of defendants' and plaintiffs' attorneys, which will be shown later.

We were anxious to find out also how far the time spent by adjusters is spent in attempting to settle bona fide differences, and how much to obstructive tactics regardless of the merits. Naturally, we could not expect much help from the adjusters on this question, but we obtained from plaintiffs' attorneys interesting comments on adjusters' activities. There was ample evidence of the expected hostility, one respondent describing the adjusters as "soulless ghouls." This epithet appeared to refer to the adjusters' alleged attempts to get settlements for far less than the "true value" of the claim, as seen by a plaintiffs' lawyer. The same informant denounced defense attorneys for bad faith in attempts to plead "forum non conveniens" where the forum was in fact quite convenient to the defendant. Plaintiffs' lawyers also charge that defendants stimulate the fear of plaintiffs and plaintiffs' witnesses that they may lose their jobs if they appear against the company.

Yet none of these comments indicated that any <u>substantial</u> part of the adjusters' time and effort was devoted to activities other than genuinely to discover the facts, to reach an agreement on settlements, and to prove the company's view of the facts.

We are led to believe that adjustment time is occasioned by the inherent uncertainties in the value of a claim. A preliminary uncertainty, from the point of view of investigation and evidence-gathering, relates to the circumstances of accident--those facts tending to prove the cause of the accident (usually negligence, or defective equipment), and contributory fault of the plaintiff.

But even if all these questions were removed from the case, basic disagreement would remain over another issue--the extent of the plaintiff's injury. As far as negotiation is concerned, it would apparently remain about as time-consuming as it now is, so long as the measurement of extent of injury retains its present difficulty.

Defendants' litigation expenses, and court expense.

Relatively small elements in the total expense picture are the defendants' litigation expense, and the public expense of trials. We treat them together, because it is evident that whatever causes one causes the other in large part.

To three defense attorneys of two different companies we put questions regarding the time spent on different topics, and the major sources of disagreement on settlement. We received the following estimates:

Time Spent	Attorney A	Attorney B	Attorney C
Procedure	30%[2]	Negligible	5%
Jurisdiction	10%	"	5%
Circumstances of accident	40%	70%	60%
Extent of injury	15%	25%	20%
Prospective earnings	5%	5%	10%
Sources of disagreement			
Procedure	5%	Negligible	1%
Jurisdiction	5%	"	1%
Circumstances	25%	20%	60%
Extent of Injury	60%	75%	28%
Earnings	5%	5%	10%

These answers confirmed the answers of adjusters, that the dominant cause of disagreement, and hence of litigation, would still exist even if all questions of fault and contributory fault were swept from the law. However, it appears that cases could be more economically prepared and tried without these questions.

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2. While A's estimate of procedural time varies greatly from the others' relative values of other elements are worth noting. Thus, A agrees with B and C that "circumstances of accident" occupy about 3 times as much effort as "extent of injury."

With regard to court expense, a few other comments may be made regarding the causes of cost. It appears that juries are directly responsible for about 45 percent of the direct cost of federal trials (see Appendix II-A, Table A-14). But they are indirectly responsible for much of the expense attributed to judges, owing to the larger amount of time required to try a case to a jury instead of a court. The Administrative Office for United States Courts (Report, 1949, Table C-8) shows that jury trials average more than twice as long as court trials. Thus the system of jury trial may be responsible for half the judicial expense, as well as for the jury expense. If so, it causes something like three-fourths of the public expense of trying FELA cases.

If jury verdicts are less predictable than court findings, the jury system contributes still more in increasing the probability of litigation, and thereby running up the adjusters' expense of gathering evidence. But this line of observation is highly speculative. In any event, the court cost of accident reparation is among the least considerable items in the entire tabulation.

Claimants' Legal Expense[3]

Many claimants have no legal expense, because they hire no lawyers. This appears to have been true of the claimants who received 73 percent of the settlements of Company X (see Table A-7) and 70 percent of the settlements in the RRB Survey (Table A-22). On the other hand, claimants who retained attorneys incurred expenses estimated for Company X at 30 percent of their awards (Appendix II-A, "Claimants' Legal Expense"), and for the RRB Survey at 27 percent of their awards (Table A-25). The expenses incurred by these claimants amounted to about 7 percent of total costs of all claims (Tables 1 and 2).

If 100 percent of the claimants had hired attorneys and other factors had remained the same, the proportion of claimants' legal expense would have risen to nearly 25 percent of total costs, with net benefits dropping to around 62 or 60 percent. If no plaintiffs had hired attorneys, and other factors were unchanged, claimants' legal expense would drop to zero, while net benefits would rise to 85 or 86 percent.

But these assumptions ignore a vital point. If no plaintiffs hired attorneys, plaintiffs would receive very much smaller payments. Although adjusters honestly profess an intention to pay the fair value of a claim as they see it, we have no doubt that the ability of claimants to recover judgments furnishes the adjusters' measure of the fair value of a claim. Plaintiffs would incur a more subtle type of expense--the expense of losing an important part of what they now obtain. On the other hand, the hiring of attorneys by 100 percent of plaintiffs would be unlikely to result in an increase in total payments commensurate with the increase in total costs.

It is plain that the present system of reparation requires a certain portion of plaintiffs to litigate their claims--enough to police the level of company settlements. Whether the prevailing proportion of attorney representation is the optimum proportion is a question on which the Illinois Study has thrown no light.

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3. See also discussion of "Expense and delay incident to use of attorneys," RRB Survey pp. 39-47.

Procurement of Claims

Substantial effort and expense is devoted to putting claimants in touch with the relatively few lawyers who handle most of the FELA cases. Three or four Chicago law firms handle most of the business in the Illinois area (including parts of neighboring states). Part of this contact work is done by the "Legal Aid Bureau" of the railway Brotherhoods, which channels most of its claims to one firm, but apparently does not stand in the way of claimants' selecting other specialized attorneys.

We have no information on the methods used, or expense incurred in the procurement of claims by established practitioners, other than those favored by the Legal Aid Bureau. We recognize that these practitioners have an established reputation among railroad workers so that the workers are not necessarily "high pressured" into placing their claims.

Occasional instances arise where solicitation of a highly organized type, and presumably an expensive one, is in evidence. An outstanding recent example is that of Sol Andrews and Sylvan Associates, who were enjoined from the use of chasers to procure claims from California, Arizona and New Mexico for suit in Illinois (Atchison, T. & S. F. Ry. Co. v. Andrews, 1949, 338 Ill. App. 552, 88 N. E. 2d 364). This type of procurement appears to represent a small proportion of the whole, owing in part to the vigilant attacks of the railroads upon it.

Although there must be some expense connected with the procurement of claims even by the better established practitioners, we were not persuaded that it actually adds to the cost of representation. There is no evidence that the fees of the procuring attorneys are higher than those of others; on the contrary, interviews indicated that procurement practices have some tendency to result in competition for claims, with consequent reduction of fees from 33 1/3 percent to 25 percent. The problem appears to resemble, from an economic standpoint, the problem of advertising and salesmanship in other businesses; the expense of procurement may be offset (if not exceeded) by the increase in efficiency of the practitioners who are enabled to specialize in this type of business. Defense attorneys appear to concede the superior skill of the established FELA practitioners, although not of some interlopers such as the defendant in the Santa Fe case (above).

We make no comment on the ethical aspects of procurement, these being outside the scope of the Illinois study.

Negotiation

Negotiation for settlement does not appear to be a time-consuming activity for claimants' attorneys. The negotiation of employers' adjusters is carried on chiefly with claimants who are unrepresented.

Trial Preparation

Since a claim enters into the litigious stage when it reaches the hands of a claimant's attorney, there is no feasible separation between investigation of facts and evidence-gathering.

Claimants' attorneys were asked, as were others, to allocate their time between various subjects of litigation. The answers of two claimants' attorneys were as follows:

Time Spent	Attorney D	Attorney E
Procedure	5%	5%
Jurisdiction	2-3%	5%
Circumstances of accident	75%	60%
Extent of injury	5%	25%
Prospective earnings	5%	5%
Unallocated	7-8%	---

Support of claimants

An expense of unknown extent is the cost of keeping plaintiffs alive and available pending trial. Claimants' attorneys often advance travel and hotel expense during the trial itself, and they appear to advance money for various minor expenses before trial is reached.4/

Free service to unions

Another item involving some expense to the claimants' attorneys who normally receive cases through the "Legal Aid Bureau" is the giving of free legal service to the Brotherhoods. Defendants' lawyers charge that the Brotherhoods aid the plaintiffs' attorneys in obtaining very profitable business in exchange for the rendering of free service as regional counsel for the Brotherhoods. Plaintiffs' attorneys deny the existence of any such understanding, and deny that the services rendered are of any substantial importance. They do not deny that they render some services to the Brotherhoods for which they make no direct charge.

Whatever the extent of services by claimants' attorneys to the Brotherhoods, there is no evidence that they result directly in higher charges to plaintiffs. On the contrary, the evidence is that the Brotherhood attorneys generally charge lower rates than independent attorneys. The cost of rendering such services may be offset by the lower expense of Brotherhood attorneys in procuring clients. They may however result indirectly in higher charges, in that these attorneys could set still lower rates if they were not expected to favor the unions which favor them. This matter rests in speculation.

Unsuccessful cases

It is reasonably evident that claimants' attorneys make a substantial unit profit on the cases in which a large judgment is obtained. At the same time, they incur substantial unit losses in cases which they investigate but decide not to litigate, and cases in which their share of the judgment is less than the expense incurred. Expenses include not only those of preparing the case, but also of advancing travel and hotel expense for claimants and

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4. The RRB Survey attempted to gain information on attorneys' advances to claimants (Appendix II, Schedule 3, Item 21f), but results are not reported (page 159; Table C-40).

witnesses during trial. Since the claimant's attorney takes the chance of making up the losses on poor cases by profits on good cases, his fee may be said to compensate him not only for expenses, but also for the risk of incurring these expenses. Our interviews indicated that one of the characteristics of a successful practitioner is his boldness in incurring hundreds of dollars of expense on cases which offer no sure promise of a return.

Comparison of plaintiffs' and defendants' expenses

Do plaintiffs' attorneys' expenses involve an undue element of profit, or an undue margin for dubious activities such as solicitation of claims?

A reference to Tables 1 and 2 will show that plaintiffs' legal expense were about half defendants' legal and adjustment expense. This might be regarded as evidence of excessive plaintiffs' expense, since defendants had to deal with 100 per cent of claims, while plaintiffs' attorneys represented only 1.6 percent of the claims against Company X and 5 percent of the claims in the RRB sample. The discrepancy is reduced when amounts of claims are considered, since attorneys represented 27 percent of the amount of claims against Company X and 30 percent of the amount of claims in the RRB Survey.

Still more significant is the fact that the plaintiffs' legal expenses are incurred chiefly in litigated cases. The railroad companies were unable to allocate their adjustment effort between litigated and unlitigated cases, but it was clear that adjustment of a litigated case would often run many times the expense of adjusting an unlitigated case.

Our figures fail to show, therefore, that plaintiffs' expenses are inordinately high in relation to defendants'. Whether they are inordinately high in relation to other factors, we are unable to say.

The only obvious discrepancy in relation to plaintiffs' attorneys' fees is the discrepancy between cost and service rendered in individual cases. The unsuccessful claimant gets a large amount of free service from his lawyer. The successful claimant--who receives a gross payment over $10,000--pays more than the cost of services he receives; he pays the freight for the unsuccessful claimant.

PART III. DISTRIBUTION OF COSTS UNDER ILLINOIS WORKMEN'S COMPENSATION ACT

SUB-PART A. COSTS OF ADMINISTERING CASH BENEFITS, EXCLUDING INSURANCE EXPENSE

The costs of administering cash benefits under the Illinois Workmen's Compensation Act are summarized below in Table 3.

TABLE 3

COSTS OF REPARATION UNDER WORKMEN'S COMPENSATION EXCLUDING INSURANCE EXPENSE

Line				Dollars	Percents
1	Net benefits to claimants			$49,391,000	63.6
	Operating expenses--excluding insurance				
2	Claimants' legal expense		$ 9,862,000		12.7
3	Employers' claims expense		16,339,000		21.0
	Taxpayers' expense				
4	Industrial Commission	$2,099,000			
5	Circuit Courts	12,000			
6	Total taxpayers' expense		2,111,000		2.7
7	Total operating expenses			$28,312,000	36.4
8	Total cost to society of system			$77,703,000	100.0

Time and place

The estimates in Table 3 apply to the four years from 1946 through 1949. They are not annual averages, but totals for the four years. Their magnitude is governed by the reports of total compensation paid under the Illinois Workmen's Compensation Act, as compiled by the Illinois Industrial Commission from reports filed with it, chiefly by Workmen's Compensation insurance carriers.

Of accidents compensated under the Illinois Workmen's Compensation Act, about 99 per cent occur within the state.

Cash benefits--excluding medical service

The aggregates shown are limited to cash benefits, and exclude medical benefits. This is a very important exclusion, since cash benefits for the two insurance companies covered by this study amounted to less than two-thirds of total benefits, while medical benefits amounted to the other one-third.

Medical benefits were excluded from the aggregates shown in the Illinois Study for two reasons. In the first place, we are interested in accident reparation systems primarily to discover the costs of their settlement and litigation aspects. We are advised by persons familiar with Workmen's Compensation that the medical benefits are negligible in the settlement and litigation processes. The benefits are said to be paid without question, so that "claims expense" cannot fairly be charged against medical benefit costs.

A second reason for excluding medical benefits is to obtain figures which are comparable to figures on the Federal Employers' Liability system. Under that system, too, employees routinely receive medical care at the company's expense when injured at work. The companies supply this service to reduce the extent of potential liability, and to minimize time-loss and hardship, without regard to whether the injury is or is not compensable under the Employers' Liability Act. Hence, they have no ready figures on medical benefits attributable to the Act, as opposed to other medical service.

Employers who are under the Workmen's Compensation system generally insure their liabilities with insurance companies. These employers also supply medical service without reference to compensability. But when the injury proves compensable, they charge the insurance company for the service rendered. This results in the insurers' having statistica on "medical benefits" which are not possessed by the self-insurers under the Employers' Liability Act.

Net benefits to claimants

"Net benefits to claimants" means the net amount of money which injured workmen received in the years reported, after their attorney's fees had been paid. This is a figure which does not appear in the reports of the Industrial Commission. They report "claims paid," which amounted for the years in question to $59,523,000.

But workmen do not receive net benefits of this amount; they must, from one pocket or another, pay the attorneys who obtain the payments. The figure for "net benefits" is reached by deducting the estimated attorney fees from the "pay-outs," thus:

Gross cash benefits, 1946-1949, as reported by Industrial Commission	$59,253,000
Total claimants' attorneys' fees, as estimated by this study	9,862,000
Net cash benefits, as shown in table	$49,391,000

For our means of estimating the claimants attorneys' fees, see the next section, and the appendix pertinent to it.

Operating expenses--exclusion of insurance expense

In administering Workmen's Compensation insurance, as well as other forms of casualty coverage, insurance companies incur many elements of expense, which may be conveniently divided into three types. The first and most important is the claims (or losses) paid in performing the insurance contract. This type appears in the foregoing discussion as "claims paid."

A second type of expense is incurred as an incident of paying claims, through the effort to determine the amount properly payable in each case, and resisting demands for more than the company thinks proper. This is called "claims expense," and appears in our table of operating expenses as "employers' claims expense" to distinguish it from claims expense incurred by employees, or by the "public" (taxpayers).

The remaining expense incurred by insurance companies embraces the costs of selling insurance to employers, of general administration, of investigating and rating the insurance buyers, of accident prevention, of paying the taxes and fees levied against the companies, and of compensating investors in insurance companies. These expenses are sometimes grouped under the name of "insurance expense," which name we adopt for the present study.

Insurance expense has a very different significance from the preceding elements of expense in the reparation system. In the first place, it is largely independent of the system of reparation, whereas the amounts paid on claims, and the work done in fixing this amount, presumably are directly affected by the features of the reparation system. In the second place, the elements of insurance expense do not appear at all in the accounts of self-insurers, such as the railroad companies whose operations under the FELA have been studied. It may well be that self-insurers who dispense with insurance expense suffer some compensating costs, but no such amounts can be segregated. A third difficulty in using insurance expense is the difficulty of correlating it with "claims paid" and "claims expense," because of the time lag between underwriting and losses.

For all these reasons, we have excluded insurance expense from our calculation of "operating expenses" in this part of the study, and in Table 3. For whatever relevance it may have, we included it in calculations which are presented later, and summarized in Table 4.

Claimants' legal expense

"Claimants' legal expense" means the expenses incurred by claimants to obtain the reparation paid them. In practice, such expense is incurred almost exclusively in the form of attorneys' fees, calculated as percentages of the amounts paid out on claims. When the prosecution of cases requires witness fees and filing fees, these appear to be disbursed in most cases by attorneys out of their gross fees. Hence, "claimants' legal expenses" are not all net income to the lawyers who receive them. But we have been unable to obtain any useful information on the amounts or proprotions of lawyers' fees disbursed by them to others.

Several notable facts about attorneys' fees appeared from our investigation. Most outstanding, perhaps, is the large percentage of cases in which they are incurred. The most reliable estimates ranged from 90 to 95 percent of cases, excluding fatal cases. In fatal cases, attorneys are less often employed, apparently in about 25 percent of the cases. Reasons for the high rate of attorney employment will be discussed later.

Also notable was the standardization of the fee rate, which all informants stated to be 20 percent in non-fatal cases. Again, a lower figure, estimated at 4 to 5 percent, was reported for fatal cases.

Most lawyers are accustomed to think of fees as a percentage of the gross award or judgment, rather than as a percentage of the total costs shown in the table. The figures in the table can be readily reconstituted to permit this calculation, as follows:

Net benefits to claimants (item 1 in table 3)	$49,391,000
Claimants' legal expense (item 2 in table 3)	9,862,000
Gross claims paid	$59,253,000
Aggregate legal expense as percent of aggregate gross claims (9,862 ÷ 59253)	16.6%

Employers' claims expense

"Employers' claims expense" represents the estimated amount spent on behalf of employers to discover the facts about each claim, to "adjust" the claim if possible and to "defend" it if agreement is not reached. "Defense" in this connection includes representation of the defendant before compensation arbitrators, before the Industrial Commission, and before the courts on appeal from the Commission. This amount is estimated at $16,339,000, or 21 percent of the total cost of the reparation system (Table 3, Line 3).

Most of the employers covered by Workmen's Compensation carry insurance; investigation and defense of claims against them is carried on at the expense of the insurance carriers. Hence, the "employers' claims expense" might be called "insurers' claims expense" in most cases, but not in all.

Taxpayers' expense

"Taxpayers' expense" represents the amount paid from general revenues of the state for the administration of the Workmen's Compensation Act. The chief item in this category is the expense of the Industrial Commission, all of which has been charged as taxpayers' expense for the years in question.

The smaller item of taxpayers' expense represents the salaries of Circuit Judges for the proportion of their time given to certioraris in Workmen's Compensation cases. This is very unevenly divided between Cook County and "downstate" counties, although the number of certioraris seems to be almost equal in each category. In down-state areas, it appears that cases are rather fully argued, and that judges spend a considerable amount of time in making their decision. Hearing of argument, plus examination of briefs, is said to occupy from two-thirds of a day to a whole day per case.

In Cook County, on the other hand, it appears that cases are heard on a motion list, and may be argued and decided in less than twenty minutes.

Since the number of certioraris per year is only a little over one hundred (as compared with allowed compensation claims of over 40,000 a year) the amount is small in any event.

No allocation has been made for expenses of clerks of court, because the clerks' offices, with their personnel, are generally self-supporting from filing fees. Filing fees in compensation cases are generally paid by claimants' attorneys, out of their own fees, and hence have been already allowed for.

Taxpayers' expenses in the Supreme Court have been wholly omitted, since they will evidently amount to even less than Circuit Court expenses, which failed to amount to as much as one one-thousandth of the total cost of the system.

SUB-PART B. COSTS OF ADMINISTERING CASH BENEFITS--INCLUDING INSURANCE EXPENSE

Table 4, below, summarizes the costs of administering cash benefits under the Workmen's Compensation law, when the costs of insuring liability are added in.

TABLE 4

COSTS OF REPARATION UNDER WORKMEN'S COMPENSATION--
INCLUDING INSURANCE EXPENSE

Line				Dollars	Percents
1	Net benefits			$ 49,391,000	43.5
	Operating expenses--including insurance				
2	Claimants' legal expense		$ 9,862,000		8.7
3	Employers' claims expense		16,339,000		14.4
	Taxpayers' expense				
4	Industrial Commission	$2,099,000			1.8
5	Circuit Courts	12,000			-----
6	Total taxpayers' expense		2,111,000		
7	Insurance expense		35,804,000		31.6
8	Total operating expenses of system			64,116,000	56.5
9	Total cost to society of reparation system			$113,507,000	100.0

The estimate of "insurance expense shown in Table 4 is based on the reports of two large, interstate insurance companies having home offices in Illinois. It includes their expenses incurred in selling insurance policies ("production expense"), in general administration, in investigating and rating the policy-buyers ("underwriting expenses"), in accident prevention, in paying taxes and license fees, and in compensating investors in the companies. According to our estimates, it amounted to about $36,000,000 in a period in which total costs of the reparation system were about $114,000,000. Thus it constituted 31.6% of total cost (Table 4, lines 7 and 9).

The calculation of insurance expense in relation to claims paid and claims expense presents a number of technical difficulties which we have not fully solved. Insurance may be sold in one year, while losses under it are

incurred in a later year, and settled in a third, fourth, or fifth year. Where business is expanding, or prices rising, or both (as in 1946-1949), insurance expense in one year is sure to be overstated in relation to claims paid in the same year. We have attempted to minimize this source of error, as explained in Appendix III-B, but do not claim to have eliminated it.

In showing the high insurance expense which appears in Table 4, we do not mean to intimate that this entire sum would be "saved" if all insurance buyers became self-insurers. A small fraction of this sum would probably be spent by the self-insurers in analyzing and reducing their own risks--a function which they now leave to the insurance companies. Another small fraction might be borne in increased taxes, if insurance taxes were withdrawn from the public revenues. Larger fractions might be incurred through increased claims payments and increased claims expense, since small self-insurers might be less efficient in claim-handling than are the large insurance companies. A still more serious social loss, although not an "expense", would be the injury claims which employers would fail to pay if not covered by insurance.

Insurance expense, therefore, does not signify a sum which would be saved by dispensing with insurance. It simply identifies the sum which is currently spent in administering the insurance operation rather than in administering the claims themselves.

SUB-PART C. SOURCES OF EXPENSE IN WORKMEN'S COMPENSATION

What makes the administration of Workmen's Compensation as expensive as it is? Here is a system which did not grow up in a haphazard fashion, like the jury trial system, but which was carefully conceived, for the avowed purpose of simplifying the process of paying injured workmen. Yet our survey shows that when 49 million dollars reach injured workmen and their dependents, more than 28 million have been spent in running the system--36 cents of operating cost for each 64 cents of net benefit. And these figures are without considering the insurance aspect. When insurance expense is included, it appears that each 44 cents of net cash benefit is accompanied by 56 cents of operating cost.

Stages of proceeding

In order to make our discussion of the causes of expense more intelligible, we will start with a description of the various stages in the proceedings through which a Workmen's Compensation claim is likely to pass.

Informal settlement. An outstanding characteristic of the Workmen's Compensation system is its attempt to dispose of a workman's claim before it reaches the courts of record. The law contemplates that compensation payments should, so far as possible, be paid directly by the employer (or his insurance carrier) to the workman, in weekly payments, with no legal formality. In the case of a small self-insured employer, practically no investigation would be necessary. But small employers generally carry insurance, and large employers maintain separate departments to settle claims. In either case, an adjuster with no personal knowledge of the facts must learn them from the workman, the foreman, and the attending physician, plus others in more complicated cases.

Lump sum settlement. The simple process of agreement and payment is complicated where the employer or employee, or both, prefer payment in a lump sum to payment in the weekly installments provided by the law. In fact, both seem to prefer this in a large majority of cases; qualified informants estimated that 80 to 85 percent of cash benefits are so paid. For approval of a lump sum payment, the parties must petition the Industrial Commission to approve the lump sum to which they have agreed. This is the simplest stage of administrative action on a claim.

Arbitration. If the employer and employee do not agree on an amount to be paid, either weekly or in a lump sum, the case goes before an "arbitrator," an employee of the Industrial Commission who hears evidence, and decides how much should be paid. The decision is called the "award."

But a majority of cases in arbitration never reach an award. Some are dismissed, as the claimant's case breaks down under examination. In a larger fraction, the parties reach an agreement in the course of the arbitration with the arbitrator's approval. Many arbitrators consider it more desirable to bring the parties together in settlement than to decide the cases themselves.

Of cases in which arbitration was sought in 1949-1950, the following results appear:

Dismissed by applicant	3,549	23.9%
Settled by contract	6,893	46.4%
Decided by arbitrator	4,403	29.7%
Total	14,845	100%

Arbitrators' hearings offer a great convenience to the parties because they are held at towns and cities near the place of injury, and promptly after application is made.

Review. If either party is dissatisfied with the arbitrator's award, he seeks a "review" by the five members of the Industrial Commission.

Appeals to courts. Parties who are dissatisfied after an arbitrator and five commissioners have tried their wits on it may resort to the Circuit Court of the appropriate county, in a proceeding called a "certiorari." A further and final appeal may be had from the Circuit Court to the Supreme Court of Illinois, by "writ of error."

Numbers of cases reaching various stages of proceeding. The numbers of cases reaching the various stages of settlement and litigation may be very roughly estimated, for a typical recent year, as follows:

TABLE 5

STAGES OF FORMAL PROCEDURE IN WORKMEN'S COMPENSATION CASES

Line			Numbers	Percents
1		Injuries reported	50,000	100
2	Less:	Informally settled or withdrawn	34,000	68
3		Remainder for settlement and arbitration	16,000	32
4	Less:	Settled by lump sum contract	5,000	10
5		Remainder for arbitration	11,000	22
6	Less:	Settled or dismissed during arbitration	8,000	16
7		Remainder for arbitrator's decision	3,000	6
8	Less:	Arbitrator's decision final	2,000	4
9		Reviewed by Industrial Commission	1,000	2
10	Less:	Industrial Commission's order final	900	1.8
11		Appealed to Circuit Courts	100	.2

Note: Of the 50,000 injuries reported as compensable, about nine-tenths, or 45,000, would eventually be compensated, the other tenth being abandoned or defeated at various stages of litigation.

The most significant fact shown by this table is the rapid attrition of cases through the various stages of proceeding, and the minute number which reach the "courtroom" stage which attracts the attention of many outside observers. This attrition was confirmed by representatives of the insurance companies who handle Workmen's Compensation claims.

Claimants' legal expense

Claimants' attorneys' fees, at 20 per cent of the pay-out, are relatively low. But the aggregate bill for claimants' attorneys is a higher percentage of the aggregate pay-out than in Federal Employers' Liability cases. This happens because attorneys are used in a much larger proportion of the Workmen's Compensation cases. Testimony to the high rate of attorney representation was unanimous, with no estimate lower than 90 per cent in non-fatal cases, and one Commissioner estimating 98 per cent.

A visit to a down-state arbitrator's hearing showed how attorneys are used even in the cases which appear to require no formal procedure of any kind. The hearing involved claims of a large number of miners employed by a single coal company, all claims being against the same company. The miners were all represented by one claimants' attorney and his adjuster, and the company by its attorney and its adjuster. The claimants' attorney was one designated by the union to which all the miners belonged.

The cases were initially taken up by the union adjuster and the company adjuster with no participation by the arbitrator. In more than half the cases the adjusters reached agreements which were filed with the arbitrator. In some cases, all compensation had already been paid, since a period of temporary disability had come to an end. In others, some weeks' compensation remained to be paid, which was typically agreed to be paid in a lump sum.

When the two adjusters could not agree, they turned matters over to the respective attorneys, who called on the arbitrator to hear their statements. After hearing them, he either granted a continuance to obtain further evidence (usually medical), or rendered a decision after a few minutes' discussion with the parties' representatives.

This meeting therefore showed "attorney representation" in cases of informal settlements, lump sum contracts, and arbitrators' hearings. No claimants at this hearing were unrepresented. As a matter of fact, the claimant's representation in the settled cases was the union adjuster, rather than the union attorney. But the adjuster functions as an employee or subordinate of the attorney, and we have been unable to segregate payment to the claimant's adjuster from payment to the attorney.

Why are attorneys necessary in all cases? We received no helpful particularization on this point, although Industrial Commissioners appeared to agree that claimants do need representation. "The procedure is too complicated for laymen," said one.

Mr. Joseph Bear, reporting on Workmen's Compensation for the nation-wide Survey of the Legal Profession, reported in 1951 that "boards or commissions generally have come to frown upon an employee's appearing without counsel..."1/

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1. Bear, Workmen's Compensation and the Lawyer (1951), 51 Columbia L. Rev. 965, at 969.

Insurers' claims expense

No precise information has been obtained regarding the amounts of money spent respectively for the services of adjusters, of attorneys, and of others in settling and litigating claims. But it appears clearly that the major expenses are the salaries and expenses of adjusters, with attorneys claiming a relatively small part of the whole. One company, which reported over $3,000,000 in four years as claims expense, reported only $93,000 for the services of attorneys as such, or about 3 percent of their total. This breakdown is not very significant, in view of the difficulty of separating attorney services from adjuster services.

Another company furnished an interesting estimate of the stages of litigation at which expenses are incurred. With respect to adjusters, this company estimated that 75 percent of their time is spent on cases which are eventually settled without arbitration or review; 18 1/2 percent would be spent on cases which terminate in arbitration and review; only 6 1/2 percent would be spent in cases which reach court.

With respect to lawyers, most of their time was spent in administrative hearings; 72 1/2 percent was one company's estimate. About 22 percent of their time, the informant believed, was devoted to court-filed cases, with the remainder (5 1/2 percent) going to cases which never reach administrative hearings.

These estimates, if correct, highlight the extent to which attorneys' services are found important in administrative proceedings, as well as in the courtroom.

Our next inquiry was to discover the subject on which the time of attorneys and adjuster is spent. The following are the results for the one company which attempted to answer these questions.

	Percent of adjusters' time	Percent of attorneys' time
Procedural matters (jurisdiction, time of notice of filing)	Not asked	2.75
Circumstances of accident (including question whether accident arose "in the course" of employment)	38.5	32.0
Amount of money due (including extent of injury)	56.0	57.5
Dependency of claimant	1.75	----
Conflict of laws (what law covers case)	----	.25
Miscellaneous (unspecified)	3.75	7.5
Total	100.0	100.0

The importance of these figures, in our judgment, is to indicate that two factors in the determination of compensation dwarf all others into insignificance. The first is the extent of injury; the second, the "course of employment" problem.

Taxpayers' expense--Industrial Commission

The expense contributed by the Industrial Commission is so small as to merit little further examination for its own sake. But it is worth going into because of what it shows about the dominant problems in compensation cases.

Three Commission officials answered inquiries about the problems which take most time in compensation hearings. Their answers, independently given, are summarized here:

	Informant G	Informant H	Informant J
Time spent on amount of money due	85%	75%	80%
Time spent on jurisdiction, procedure, and scope of employment	---	25%	20%
Time spent on jurisdiction	2%	---	---
Time spent on circumstances of accident	5%	---	---
Unspecified	8%	---	---
	100%	100%	100%

These answers served to emphasize even more the difficulty of the "extent of injury" problem in workmen's compensation cases. Our informants explained how doctors appear on both sides, just as in personal accident jury trials, and the commission must hear out their conflicting versions in the effort to determine truth.

Implicit in these discussions was the inability of the Commission to decide cases quickly and easily by the provisions of the Workmen's Compensation Act. The act provides for payment during the period of disability. But the problem arises in determining the existence of disability.

Even more difficult are the cases of permanent injury, where the arbitrator or Commission must determine the extent of future disablement. The Act contains interesting "schedules" of the compensation to be paid for a hand, a leg, a forearm, an eye, and so forth. But our interviews have shown that relatively few cases can be solved by reference to the schedule. The loss of a hand, for example, also tends to disable the forearm, and to create complications including pains, which lead to further disability.

No analysis of the reasons for time-use in the Circuit Courts has been made. The judges who were interviewed found it impossible to generalize as to questions arising most frequently.

PART IV. COMPARISON AND EVALUATION OF FINDINGS

TABLE 6

COMPARATIVE COST DISTRIBUTION
in percentages of total cost

Line	Item	Col. 1 Company X (FELA)	Col. 2 RRB Sample (FELA)	Col. 3 Ill.W.C.A. excl. ins.	Col. 4 Ill.W.C.A. incl. ins.
1	Net benefits	80.2	78.1	63.6	43.5
	Operating Expenses				
2	Claimants' legal exp.	7.1	6.8	12.7	8.8
3	Employer's claims exp.	12.3	14.6	21.0	14.4
4	Taxpayers' expense	.4	.5	2.7	1.8
5	Insurance expense	—	—	—	31.6
6	Total operating exp. (lines 2-5 inc.)	(19.8)	(21.9)	(36.4)	(56.5)
7	Total cost to society	100.0	100.0	100.0	100.0

Note on sources: Figures are the same as those already presented in Tables 1, 2, 3 and 4.

Preliminary comparison

Table 6 lays side by side our findings on the distribution of costs in different reparation systems and different companies. Columns 1 and 2 show the experience of companies settling claims wholly or largely under the Federal Employers' Liability Act. Columns 3 and 4 show estimates of costs for insured risks under the Illinois Workmen's Compensation Act.

The figures show some striking comparisons and contrasts. Under the FELA, two wholly independent groups of figures give strikingly similar results as to the relative contribution of different elements of cost. In both groups, claimants' lawyers account for between a fourteenth and a fifteenth of total cost; in both groups, the employer's claims expense is between a sixth and a ninth of the total; in both groups, court expense is about half a percent; in both groups, net benefits are approximately four-fifths of estimated total costs.

Contrasting with the FELA figures are the figures in column 3, relating to operations under the Illinois Workmen's Compensation Act. Here, the net benefit ratio drops from about four-fifths to less than two-thirds of total cost. Expenses are sharply up. Claimants' attorneys appear to be getting an

eighth of the total instead of something between a fourteenth and a fifteenth. Employers' claims expense is more than a fifth, instead of less than a sixth. Taxpayers' expense, although still a minute fraction of the whole, is a fraction five times larger.

Column 4 presents another summary of Workmen's Compensation operations, with the expense of operating insurance companies thrown into the hopper. This makes all other elements of expense shrink in proportion, although the same absolute amounts are involved as in column 3. It indicates that, when Workmen's Compensation is administered through an insurance system, less than half of the total system cost becomes grocery money in the pockets of injured workmen.

For purposes of comparing systems, however, we find Table 6 somewhat unsatisfactory. Since all elements are stated as percentages of the whole, an error in any element falsifies to some extent the statement of every other. More light, for comparative purposes, will be shed by a table which presents each element of cost as a percentage claims paid. For this reason we restate the same data in different terms in Table 7.

TABLE 7

COMPARATIVE COST DISTRIBUTION
in percentages of claims paid

Line	Item	Col. 1 Company X (FELA)	Col. 2 RRB Survey (FELA)	Col. 3 Ill.W.C.A. excl. ins.	Col. 4 Ill.W.C.A. incl. ins.
1	Claims paid	100.0	100.0	100.0	100.0
2	Net benefits	91.9	92.0	83.4	83.4
	Operating expenses				
3	Claimants' legal exp.	8.1	8.0	16.6	16.6
4	Employers' claims exp.	14.0	17.2	27.6	27.6
5	Taxpayers' expense	.5	.6	3.6	3.6
6	Other insurance exp.	-----	-----	-----	60.4
7	Total operating exp.	(22.6)	(25.8)	(47.8)	(108.2)
8	Total cost to society	114.5	117.8	131.2	191.6

Note on sources: Figures in this table are based on the same aggregates used in Tables 1-4 and Table 6. Table 7, however, shows various elements of expense as percentages of claims paid rather than as percentages of total cost.

Table 7 shows, in the main, the same relationships which have already been pointed out, stated in a little different way. Looking at line 8, we can see that the total costs of reparation in Company X cases are about one-seventh more than the gross pay-outs made by the company. Total costs in the RRB cases are a little more than a sixth greater than the pay-outs. In the Illinois Workmen's Compensation system, on the other hand, the system's cost seems to be nearly a third more than the pay-outs, without even counting insurance expense. When insurance expense in included, total cost appears as nearly twice the pay-outs; it is more than twice the estimated net benefits received by workmen. Reasons for these differences will be discussed in the pages to follow.

Are our figures wrong?

If readers are surprised by our comparisons, so are we. We too have read that jury trials are wasteful, administrative commissions efficient. When we first outlined this study, we rather expected to discover the opposite of what we now believe. As our figures have developed, we have asked ourselves: how accurate are they?

Some parts of our survey are based on fragmentary evidence. Some, on the other hand, are based on corporate accounting records, and subject to a minimum of suspicion. Of the latter group are the figures which stand behind lines 1 and 4 of Table 7--"Gross claims paid" and "employers' claims expense."

These figures show that Company A, under the FELA, paid 14 cents to administer each dollar of claims. A nationwide group of companies, studied ten years earlier, and working predominantly under the FELA, spent an average of 17 cents for each dollar of claims. Companies A and B, operating under Workmen's Compensation Laws, spent over 27 cents per dollar of cash benefits.

We think there is very little inaccuracy in these figures as to these elements of expense in the type of operation represented. But what about other elements of expense for the same types of operation?

Turning again to Table 7, readers will see that in column 3, where employers' claims expense is so much higher than in preceding columns, claimants' legal expense and taxpayers' expense are also higher. This is quite logical. We should expect insurance companies to spend more money defending claims where claimants spend more money pressing them. Where both spend more money, taxpayers too are likely to have larger bills. Hence, our less authoritative figures are corroborated by our best authenticated data.

Are our figures typical?

Our figures are based on such small numbers of companies that they would have, without corroboration, very little significance. However, broader samples of information are available on key points. The broader samples indicate that our ratios are in the right range, but that they overstate the difference between administration of FELA and administration of Workmen's Compensation.

Taking first the FELA figures, Table 7 shows that Company X has a ratio of claims expense to claims of 14 percent, while the nationwide RRB sample had a ratio of 17.2 percent. Other expense items show negligible differences. The result is that our figures on Company X may well be about 3 percent lower, on the total of operating expenses, than the industry generally. The RRB figures, on the other hand, are the widest sample which has ever been taken, or is likely to be taken. We have no basis for doubting them.

Turning to the Workmen's Compensation figures, a comparison may be made between the claims-expense-to-claims ratios of Companies A and B, and of the National Bureau group of 68 companies. As percentages of total costs of insurance, these two groups show the following (from Appendix Part III-B, Table A-38):

	Claims incurred, cash and medical	Claims expense incurred
Companies A and B	56.8%	8.8%
National Bureau group	52.4%	8.1%

Converting these figures into percentages of claims incurred, we have the following comparison:

	Claims incurred, cash and medical	Claims expense incurred
Companies A and B	100%	15.5%
National Bureau group	100%	15.5%

As far as we can see, our companies A and B are in line with the broadest sample available.

One point on which we are skeptical of the correlation of our figures with broader areas of experience relates to the percentage of claims in which claimants incur attorneys' fees. However, we know of no basis of comparison. We have used the most reliable sources of information we could uncover. But we freely concede that the percentage of attorney representation may be generally less in Illinois than we have inferred, and may be generally less outside Illinois than in Illinois.

A second point on which our survey fails to represent the whole picture results from its failure to record the experience of self-insurers in the workmen's compensation field. Self-insurers have been estimated to pay about a quarter of the total workmen's compensation benefits in the course of a year in Illinois (Ill. Dept. of Labor, Annual Industrial Accident Cost in Illinois, issued May, 1951, p.5). From a priori considerations, we are prepared to believe that self insurers can administer claims at a considerably lower expense ratio than insurance companies. They are dealing with their own employees, usually in highly concentrated locations. It may indeed be that the economy shown by railroad companies as against insurance companies in this survey is attributable more to the fact that they are self-insurers than to differences between the Employers' Liability system and the Workmen's Compensation system.

If this hypothesis is correct, it does not invalidate in any way our comparisons. But it restricts significance of our Workmen's Compensation figures to Workmen's Compensation administered through insurance companies.

In summary, we think that our figures are essentially sound as a comparison of operating expenses between (1) FELA-through-self-insurance, and (2) Illinois Workmen's Compensation-through-insurance. We suspect, however, that the gap between the systems is a little narrower than our figures tend to show.

Allowing for the maximum corrections which we think probable, we believe that the expense ratio for the administration of the Federal Employers' Liability Act, through self-insurance, is measurably lower than the expense ratio for Illinois Workmen's Compensation, through insurance companies. We regret that we have no data which would permit us to form an opinion on the expense ratio of Illinois Workmen's Compensation through self-insurance.

Comparison of attorney representation

Perhaps the most striking feature of our findings is the indication that aggregate legal expense for claimants is higher in the Workmen's Compensation system than in the Employers' Liability system. At no point are our findings more sharply in conflict with the traditional teaching of labor economics. According to Table 7, claimants' attorneys' fees under FELA were 8.0 percent to 8.1 percent of claims paid. But attorney fees under the Illinois Workmen's Compensation Act were 16.6 percent of claims paid.

The source of the higher aggregate in Workmen's Compensation is easily traced through our figures. The rates of attorney fees in individual cases were higher in the FELA cases than in the Workmen's Compensation cases. For FELA, they were estimated at 27 to 30 percent. For Workmen's Compensation, they were shown to be slightly under 20 percent.

The reason for the higher aggregate in Workmen's Compensation cases was the large proportion of settlements obtained through attorneys, which appeared to be 85 percent of all settlements. Under FELA, the proportion of settlements obtained through attorneys was placed at only 27 percent for Company X, and 30 percent for the RRB group.

The contrast may be summarized in this way:

	FELA cases Company X	FELA cases RRB Survey	Ill.W.C.A. cases
Proportion of settlements obtained through attorneys	27%	30%	85%
Rates of fees in attorney settlements	30%	27%	19.5%
Total attorney fees as percent of total settlements (including non-attorney settlements)	8.1%	8.0%	16.6%

A glance is enough to reveal the striking difference between the percent of attorney representation in FELA cases and in Workmen's Compensation cases. Our investigation also showed a number of factors which tend to confirm and explain the higher rate of attorney representation in the workmen's compensation cases. These will be considered separately.

Proportion of cases undergoing official action. All sources appeared to confirm that the completion of settlement without attorney representation is practically confined to cases in which the settlement is made without any action by "officials,"--that is, arbitrators, commissioners, or judges. Hence, any increase in the area of "official" action is accompanied by an increase in attorney representation.

In the FELA cases, there is only one form of official action--the suit in court. This occurs in a very small numerical fraction of the cases. In Company X, for example, only 80 out of 4980 cases settled were court-filed, or about 2 percent. (Because these involved the larger sums, they amounted to 27 percent in dollar value.) In the RRB Survey cases, we have estimated that 385 out of 13,504 settlements were made after filing suit, or about 2 1/2 percent. (These claims amounted to 30 percent in dollar value.)

In the Workmen's Compensation group, we find quite a different story. According to the estimates presented in Table 5, about 32 percent of Workmen's Compensation cases are subjected to some form of judicial action, the simplest type being the confirmation of a lump sum settlement. Even if this group were laid aside, we would have 22 percent undergoing a hearing before an arbitrator. It seems reasonable to assume that the cases undergoing official action involve larger sums, so that the 32 percent undergoing official action would involve a much larger proportion of claims in dollar value.

Claim procurement by claimants' attorneys. Another difference between FELA and Workmen's Compensation was observed in the matter of claim procurement. In the FELA field, it appears that there is typically a race among various claimants' attorneys, and the railroad adjusters, to be first in making a binding arrangement with the injured workmen. In some cases the adjusters are able to obtain a binding release, on terms accepted by the workman, before claimants' attorneys are able to negotiate a binding contract for representation. Where the adjusters are unable to do this, there is a substantial element of competition among claimants' attorneys. These latter include not only the half-dozen attorneys who are constantly active in this field in Chicago, but also general practitioners who handle only an occasional FELA claim.

In the race among claimants' attorneys, a considerable advantage is held by the firm which has a standing reference arrangement with an agency of the Railroad Brotherhoods known as the "Legal Aid Bureau." The Bureau conducts a continuing educational campaign among Brotherhood members to induce them to make their claims through the bureau, but apparently does not attempt enforcement of any rigid rule. The railroad companies are said to have deterred them from such a practice by threats of prosecution for unlawful practice of law. The railroads also wage a continuing battle against excessive procurement by "free-lance" claimants' attorneys, and disciplinary action appears from time to time in the published court reports. These facts contribute to keeping down attorney representation in FELA cases.

In Workmen's Compensation practice, on the other hand, it appears to be typical in highly unionized plants and mines for all claims, regardless of amount, to be handled by an attorney recommended by the union local. It appears that employers and their insurers make no such systematic attempt to break up this practice as is made in the railroad industry. Reported cases in Illinois contain records of action against procurement of cases by non-attorneys, but no action against members of the bar. Furthermore it is practically impossible for insurance adjusters to bind the claimant to a settlement before claimants' attorneys reach him, because of the legal provision that any settlement made within seven days of the accident is "presumed fraudulent." (Ill.W.C.A. [1951] § 6(d), Ill. Rev. St. [1951] c. 48 § 138.6 (d)).

Why the unions encourage all their members to handle claims through the union attorney, regardless of individual necessity, remains somewhat obscure. Industrial Commission officials appear to believe that claimants need representation, and make no criticism of the extent of attorney representation. Their opinions appear to be based on the difficulties of correctly appraising and presenting a claim without professional assistance.

Another reason for encouraging attorney representation may be the low fees in individual cases. Since the total claim limits are relatively small, and maximum fees are limited by commission action to 20 percent, union attorneys might not be eager to handle claims if they were paid only for those which demand extensive litigation. It definitely appears that free-lance attorneys do not desire sporadic compensation claims. Hence, it may well be that attorneys consent to push disputed claims vigorously on the condition that they are permitted to handle the undisputed claims as well as the disputed.

Perils of non-representation. Further reasons for the higher ratio of attorney representation in Workmen's Compensation cases may stem from a greater danger of losing a fair settlement under the compensation system.

We make this suggestion with some hesitancy because the Workmen's Compensation system has been expressly designed to reduce this danger. It contains a specific schedule of rates of compensation for various types of injury, and calls for filing of all settlements with the Industrial Commission. The protection in these provisions appears, however, to be somewhat illusory. It does not appear that the Industrial Commission does or could comb all reported settlements for adequacy. Moreover, the big problem for the claimant is determining what injuries he has. The loss of a hand is obvious enough, but the obviousness may itself be a trap for the unwary claimant. The function of an attorney is to suspect and investigate further injuries to the arm or other bodily functions. Hence, the danger of an inadequate settlement is not necessarily less under Workmen's Compensation than under FELA.

In another aspect, the perils of a Workmen's Compensation claimant are apparently greater than those of an FELA claimant. This is in respect to losing his claim entirely through failure to comply with the time limitation of the Workmen's Compensation Act.

The Illinois Workmen's Compensation claimant was required, in the years covered by our survey, (1) to give notice of accident within 30 days, (2) to make claim within 6 months, and (3) to apply for adjustment within one year (Ill.W.C.A. [1939] § 24), unless within the year he received benefit payments which would extend the time. The claimant fell into a trap when he erroneously assumed that he was receiving benefits or had filed his claim. In a recent Illinois case, the claimant let the year slip by while receiving payments from the "Employees' Benefit Association." Since these were not paid pursuant to the Compensation Act, they did not extend the employee's time for filing claim. (International Harvester Co. v. Industrial Commission, 1952, 410 Ill. 543, 103 N.E. 2d 109 ; 3 judges dissenting.) It further appears that the employee does not preserve his rights if his action, within the year allowed, is mistakenly pursued under the common law, the Federal Employers' Liability Act, the Longshoremen's Act, or perhaps even the Workmen's Occupational Disease Act (see Brodek v. Ind. Ins. Co., 1937, 292 Ill. App. 363, at 379, 11 N.E.2d 228). According to general report, experienced attorneys made separate simultaneous claims under each of the various beneficial statutes which was potentially involved.

Under the Federal Employers' Liability Act, the claimant is allowed three years, instead of one, to take formal action on his claim (45 U.S. Code §56). The cases generally show less striking instances of inadvertent loss of claim under this law.

Comparison of size of claims

A reason which may be suggested for the higher expense ratio of the Workmen's Compensation cases is the smaller size of claims. The average pay-out (i.e., the arithmetic mean) in the Workmen's Compensation cases covered by our survey was $318, while the averages for FELA pay-outs were $766 in Company X cases and $613 in RRB Survey cases. If we could assume that the expense of handling a claim varies less than the size of claims, we could attribute the difference in operating expenses of the two systems to differences in claim sizes. This possibility should be considered in the light of the averages of various expense elements, and of the claims themselves which we present in Table 8.

TABLE 8

COMPARISON OF AVERAGE PAYMENTS AND EXPENSES PER CLAIM
(in dollars)

Line		Company X (FELA)	RRB Survey (FELA)	Ill.W.C.A.
1	Average claim payment	$ 766	$ 613	$ 318
2	Average net benefit	704	564	265
	Operating expenses:			
3	Average claimant's expense	62	49	53
4	Average employers' expense per claim	108	105	88
5	Average taxpayers' expense per claim	4	4	11
6	Average total operating expenses per claim	($ 174)	($ 158)	($ 152)
7	Average total cost of reparation per claim	$ 878	$ 722	$ 417

In weighing the suggested hypothesis, we take first the item of claimants' legal expense. We have already noted that these are calculated by attorneys as percentages of the claim payment. They reveal no tendency to approach a constant minimum. Moreover, we have shown that the large aggregate claimants' legal expense in Workmen's Compensation cases is directly traceable to the large proportion of legal representation among Workmen's Compensation claimants. Hence, it seems clear that the smaller size of Workmen's Compensation claims has a negligible effect on the higher ratio of aggregate claimants' expense in these cases.

Taxpayers' expenses have even less relationship to the average size of claim. As Table 8 shows, average taxpayers' expense per case is not only relatively, but absolutely, higher under Workmen's Compensation than under the FELA. Moreover, taxpayers' expense is incurred only in cases undergoing official action, either in the courts or in administrative tribunals. The aggregate of taxpayers' expense is a function of the number of cases undergoing official action, rather than of the size of claims.

In relationship to employers' expenses, it is more probable that there is a constant minimum of expense per case which constitutes a larger proportion of total cost because claims are smaller. Since employers process every claim, whether or not it is presented by an attorney, or undergoes official action, each case occasions some minimum of expense. Moreover, one insurance company estimated that 75% of adjusters' time is spent on cases which are settled without arbitration; this is very close to the 78% of claims which we have estimated to be so settled (see Table 5, line 5, showing that roughly 22% of cases reach arbitration).

Opposed to this explanation are the demonstrable facts about the concentration of claimants' and taxpayers' expenses on the cases which undergo official action. It seems reasonable that their expenditures will be matched in some degree by like expenditures on behalf of insurers. Weighing the arguments on both sides, we believe that the smaller average size of workmen's compensation claims plays a significant part, but not a dominant one, in causing the high proportion of operating expense in Workmen's Compensation cases.

Comparison of activities in claim-handling

It is now plain that both our systems of accident reparation involve great expense in the handling of claims, from investigation to final settlement. Presumably the expense arises because there are questions in dispute. Are there any significant differences between the questions that are disputes in the two systems? This is our next question.

In terms of formal legal issues, the differences are easily found. Under the Federal Employers' Liability Act, there are the questions of "primary negligence," of "contributory negligence," and of "loss of earnings." Under Workmen's Compensation, all these questions have been abolished, but new questions have arisen, called "course of employment," "extent of disability," and "covered employments." In terms of these concepts, no comparison is possible.

Further investigation reveals that the questions which arise in the two systems have a good deal in common. In both, the question is ever present of how badly disabled the claimant is. The much publicized amputation schedule in the Workmen's Compensation Acts is only the beginning of inquiry; whether the workman has lost one of the listed members, or whether he has not, the question arises as to what other injuries he has. Conversation with adjusters and

attorneys in the Workmen's Compensation produces endless accounts of battles of the expert witnesses, as though no schedule existed. In a recent address, the chairman of the Illinois Industrial Commission reported a proceeding in which one side produced twelve expert witnesses, and the other side, eleven. The parade of witnesses was such a regular phenomenon that the Commission was forced to announce a rule that not more than three expert witnesses would be allowed to each side.

In both systems, the details of "how the accident happened" play an important role. Under Federal Employers' Liability, these facts are important to show present or absence of negligence and contributory negligence, and causation between negligence and injury. In the compensation system, they are important to show whether the accident arose "out of and in the course of the employment." Problems of this type were covered by questions about "circumstances of accident."

In both systems, of course, there are procedural questions, like the timely filing of a claim or suit, and jurisdictional questions as to whether the law under which the claim is made applies to the claim.

In our investigation of these factors, we were forced to frame our questions in slightly different ways for different informants, but a substantial parallelism in answers was obtained. Informants were asked to estimate the proportion of their time taken up by each different type of problem. Their answers are presented in comparative form in Table 9.

TABLE 9. SUBJECTS OF DISPUTE IN WORK INJURY CASES
Percent of Time Consumed

	FELA							Workmen's Compensation			
	Defense adjusters		Defense attorneys			Claimants' attorneys		Defense adjusters	Defense attorneys	Industri Commissi	
	Q	R	A	B	C	D	E			G	H
"Technical questions"	—	10	NA	NA	NA			NA	NA	NA	NA
"Procedural questions"	NA	NA	30	—	5	5	5	NA	2.75	—	—
"Jurisdictional questions"	NA	NA	10	—	5	2-3	5	—	.25	2	—
Circumstances of accident	60	60	40	70	60	75	60	38.5	32	5	—
Amount of damage	15	20	15	25	20	5	25	56	57.5	85	75
Prospective earnings	5	10	5	5	10;	5	5	NA	—	NA	NA
Dependency of claimant	NA	NA	NA	NA	NA	NA	NA	1.75		NA	NA
Miscellaneous and unallocated	25	—	—	—	—	3-2	—	3.75	7.5	8	25*

Notes on Table

NA = Not asked

* The estimates marked with an asterisk represented a lump figure for questions of "procedure, jurisdiction, and course of employment."

From this small and disparate group of answers, certain facts stand out. In both systems, there are two main subjects of investigation and preparation. These are the circumstances of the accident,and the amount of damage done. Industrial Commission informants placed a low rating on circumstances of accident, but we interpret their answers as reflecting the relatively small amount of tribunal time spent on these issues. They are not inconsistent with the evidence that adjusters and attorneys spend a great deal of time on them.

The second point which stands out is that in FELA cases, circumstances of accident take two or three times as much of the adjusters' and attorneys' efforts as the amount of damage; this relation is relatively constant, even though informants differ as the proportion of total time taken by the two main problems. In Workmen's Compensation cases, on the other hand, "amount of damage" is consistently a much more time-consuming question than "circumstances of accident." This is consistent with the known fact that "negligence" is not an issue in Workmen's Compensation proceedings.

The third important lesson of these answers is that "procedural" and "jurisdictional" questions are not dominant in the time required to process an

injury claim. This supplies a valuable corrective to conclusions which might be reached by reading appellate court decisions in these fields. Such questions, involving difficult legal questions, occupy a conspicuous role in higher court arguments, but are less prominent at the level where most of the time is spent.

PART V. RECOMMENDATIONS

This report is a pilot study. No recommendations for legislation could safely be based upon it, although it may be used to corroborate evidence from other sources. We believe it shows mainly the practicability of quantitative study of work accident reparation systems, and the significance of the findings which such study may produce. It also offers valuable guides as to desirable directions for further study.

1. Operating costs. The one conclusion to which the present report most defintely points is that the Illinois Workmen's Compensation system, administered in connection with a system of insurance, is not more economical than the Federal Employers' Liability system. It may be more desirable for other reasons, some of which will be discussed later. Further observations on the same field of operation, by independent researchers, would cast further light on the validity of this tentative conclusion.

Studies of other fields would also be of great value. Operation of the Illinois Workmen's Compensation system in conjection with self-insurance should be studied. Operation of systems in other states should be examined.

Findings in this field are of vital importance because of serious proposals to extend the compensation system to the railroad industry, and to automobile accidents. One objective involved in such proposals is economy of operation. We believe that this objective cannot validly be advanced as a reason for conversion to a compensation-insurance system, until it is shown that the proposed system will escape some of the sources of expense present in the Illinois Workmen's Compensation system.

2. Determining extent of disability. Outside of attorney representation, the major field for reduction of operating costs in workmen's compensation lies in simplifying the determination of extent of disability. Plainly, the amputation schedule has left most of the job to be done, if it has accomplished anything at all. If any states have developed means of reducing the battle of the expert witnesses, results under these systems should be observed to see whether they permit increased over-all efficiency.

3. Circumstances of accident. A comparison of the role of "circumstances of accident" in two systems shows that their prominence has been substantially reduced in the Workmen's Compensation system. Presumably they could be still further reduced by broadening the concept of "arising out of and in the course of the employment." A study of cases could be undertaken to discover how greatly pay-outs would be increased or reduced by substituting a simpler concept like "during working hours." Such a determination would permit legislatures to decide whether the present legal criterion is worth the money it costs to apply it.

4. Attorney representation and direct settlement. Further study is needed of the extent of attorney representation in Workmen's Compensation, and the reasons for it. Observers should attempt to analyze the cost of not having an attorney, as well as the cost of having one. The cost of having an attorney is readily measured by his fee rate. The cost of not having one may be an inadequate award. It is important to discover, if any means can be found, how awards for unrepresented claimants compare with awards for similarly injured claimants with attorney representation.1/

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1. Some information on this subject is presented in RRB Survey (1947), Vol. II, Tables C-15 and C-22.

But the inquiry cannot stop with a comparison of amounts. This must be coupled with a study of rehabilitation. Railroad companies claim that they frequently place an amputee in a new job which he can fulfill despite his handicap, without loss of earnings. Such a rehabilitated workman has no further loss of earnings, and will consequently be entitled to a lower cash award than a workman who is not rehabilitated. Insurance companies under workmen's compensation also make much of their rehabilitation programs, although they have less monetary incentive because the amputation schedule makes no allowance for rehabilitation or the lack of it. A serious effort should be made to discover the relationship between settlement procedures and rehabilitation programs.

5. Periodic payments. A frequently cited advantage of compensation systems over employers' liability and common law systems is the advantage of periodic payments over lump sum payments. The comparative performance of the two systems in this regard was not a subject of the Illinois study. However, our attention was caught by evidence that the Illinois Workmen's Compensation system does not operate in this regard as has generally been supposed. Lump sum settlements appear to be extremely numerous. One informant estimated that 85 per cent of the amounts paid out by compensation insurers are in lump sums.

This matter merits further investigation. On the one hand, it may be that the Illinois system needs reform to reduce lump sum payments. On the other hand, some informants suggested that an injured workman's rehabilitation begins in earnest when his case is closed with a lump sum settlement; before that, his impulse to find new work conflicts with his fear of minimizing his disability allowance. Theory and practice in relation to lump sum payments need to be further looked into.

APPENDICES

to

COSTS OF ADMINISTERING REPARATION FOR WORK INJURIES IN ILLINOIS

University of Illinois
Urbana-Champaign
1952

APPENDICES
to
Costs of Administering Reparation
for Work Injuries in Illinois

Contents

List of Appendix Tables

APPENDIX II-A
(Supplementing Part II, Sub-Part A, of the text)

Company X

Although the figures shown represent the experience of Company X alone, we were able to compare data of one comparable company on certain points, as will appear. The comparable company, which we call Company Y, is also a major interstate railroad company, with its largest concentration of operations in Illinois.

How typical are companies X and Y? The only basis we have for comparing them with other roads is a group of reports showing personal injury pay-outs of roads X and Y and six others which have major termini in Chicago. Of these six, Companies P, Q, and R are predominantly mid-western in their operations, although not predominantly Illinois. Companies S, T, and U might ordinarily be described as "Eastern" or as "Western" Roads.

Selected figures for comparison are presented below in Table A-6. They indicate that the experience of Company X is basically similar to the experience of other railroads operating in Illinois in relation to work injuries.

Table A-6. Comparison of Companies in Relation to Personal Injury Pay-outs, 1948-1949

Companies	Col. 1 Total personal injury pay-outs	Col. 2 Employee pay-outs per 1000 man-hours
Illinois:		
X	$ 3,729,000	$13.12
Y	2,766,000	13.07
Other midwestern:		
P	$ 2,895,000	$13.14
Q	3,135,000	20.54
R	2,639,000	12.34
Eastern or Western		
S	$ 8,897,000	$23.39
T	13,746,000	18.24
U	5,454,000	17.00

Notes on Table A-6

Column 1 in Table A-6 shows the total pay-outs for the years 1948 and 1949 for all types of personal injuries--to passengers, to persons on grade crossings or tracks, and to employees. In the breakdown of constituents, not shown here, from two-thirds to three-fourths of the total prove to be employee pay-outs.

Column 2 shows the "employee pay-out per man-hour." This results from dividing total personal injury pay-outs to employees by the thousands of hours worked by all employees during the period. The original reports gave this figure for the years 1948 and 1949 separately. The table above gives arithmetic averages of the two years, without weighting.

Net benefits to claimants.

The basic figure on which this estimate is based is the gross pay-outs as reported by Company X. This was reported by the company in annual totals of litigated and unlitigated cases of employee injuries, as follows:

Table A-7. Employee Personal Injury Payouts, Company X, 1946-1949:

	Litigated	Unlitigated	Total
1946	$ 109,000.60	$ 606,593.00	$ 715,593.60
1947	75,897.60	638,230.05	714,127.65
1948	281,166.66	781,522.72	1,062,689.38
1949	565,991.81	758,942.50	1,324,934.31
1946-49	$1,032,056.67	$2,785,288.27	$3,817,344.94
Percents	27%	73%	100%

The company reported all employee injuries as compensated under the Federal Employers' Liability Act. Although it is theoretically possible that some would be more properly under the Workmen's Compensation Act, the company appears to proceed on the assumption that FELA governs in all cases.

The figure shown at the bottom of the last column in Table A-7 is the figure taken as the total of gross pay-outs for employee injuries. From this, we subtracted the estimated claimants' attorneys' fees, which were calculated as explained in the next section.

"Net benefits" and "claims paid" are used in this report to refer only to cash payments. We have excluded medical benefits from the study, for a variety of reasons. A primary reason is the fact that medical treatment for injured employees is not, according to all persons interviewed, a material factor in in occasioning operating expense. There is no investigation or adjustment of the employee's right to medical treatment, and no litigation about it. A secondary reason for excluding them is the fact that medical services to employees are not recorded separately from medical services to others, and can only be estimated as a proportion of total medical services.

When an injured employee declines medical service offered by the company, and obtains service independently, his expenses become part of the amount for which the company may be liable, and are therefore included in the "pay-out." However, these amounts are not separated, either in voluntary settlements or in jury verdicts. Hence, they are included in the aggregate figures we present for gross pay-outs, and for net benefits. We are advised that they are a relatively small part of such sums.

Some analysts may disagree with our decision to exclude the value of medical benefits rendered by the company from the aggregates of this study. For their benefit, we present the estimates of Companies X and Y as the proportion of their medical services which they estimate to be attributable to employee injuries.

Table A-8. Medical Services to Injured Employees, Compared with Cash Payments, 1946-1949.

Line No.		
1.	Company X, cash payments	$ 3,817,000
2.	Company X, medical service to employees (estimated as 75% of all medical services)	417,000
3.	Medical service as per cent of cash benefits, Company X	10.9%
4.	Company Y, cash payments	3,930,000
5.	Company Y, medical service to employees (estimated as 75% of all medical service)	577,000
6.	Medical service as percent of cash benefits, Company Y	14.7%

Notes on Table A-8

The ratio of employee medical expense to all medical expense (lines 2 and 5) was independently estimated at 75% by officials of each company.

Claimants' legal expense.

"Claimants' legal expense" is our estimate of all sums spent by all claimants for employee injuries in 1946-49. Interviews indicated that substantially the only expense incurred by claimants is their attorneys' fees. These are calculated as percentages of the amount paid out on the claims; expenses for witnesses, investigations, and filing fees are paid by the attorneys out of their gross fees. Since the fees are contingent, nothing is paid by those claimants who receive nothing. Lawyers, of course, incur expenses in cases which they lose as well as in cases which they win. But they must recoup their expenses in the unsuccessful cases from their returns in the successful ones.

Our inquiry resolved itself into two questions. First, what proportion of pay-outs are made to claimants represented by attorneys? Second, what fee rate is charged in the cases where the claimants are represented?

Attorneys for claimants have very little information about the cases which they do not handle. Our only sources of information on the proportion of cases with attorney representation were employer companies. Of these, Company Y stated that it was unable to furnish any information on this point. This was, in fact, our major reason for being unable to use the figures of Company Y in this survey.

Company "X" reported that its classification of "litigated cases" included all those in which it dealt with attorneys as representatives of claimants. Hence, we used the company's figure for litigated claims--$1,032,000--as the amount of claims against Company X which was subject to attorney fees.

Officials of Company X did not have first hand information on the rate of attorneys' fees, but believed that 33 1/3 per cent is prevalent. On this point,

however, we had first-hand information from various persons engaged in representing plaintiffs. An official of the Brotherhood of Railroad Trainmen stated that the attorneys to whom they refer cases charge only 25 per cent, and the same statement was made by the principal attorney handling cases on reference from this organization. One source indicated that a principal "free lance" claimant's lawyer also charges 25 per cent; but an associate of this attorney indicated that this would be a cut-rate, given when necessary to "meet competition" on a particular case; the regular charge is 33 1/3 per cent. Some attorneys accuse their competitors of charging more than 33 1/3 per cent; they regard this as excessive. We concluded that 33 1/3 per cent is the going rate for free-lance attorneys.

We were unable to arrive at any accurate estimate of the number of cases handled by the Brotherhood attorneys for 25 per cent and those handled by "free lancers" for 33 1/3. For purposes of calculation, we have used the figure of 30 per cent, recognizing that we have a probable error of a few percentage points in either direction.

The estimate of total claimants' legal expense was reached by taking 30 per cent of $1,032,000, or approximately $310,000.

Employer's claims expense.

In Company X, the expense of handling claims for employee work injuries was contained in three accounts. The total amount of each account was precisely known, but the portion to be allocated to employee claims was a matter for very rough estimate, the company maintaining no segregation on this basis.

The largest single item of expense was that marked "claims department," consisting of salaries paid to claim adjusters, together with their supervisors and their assistants (stenographic and filing). The totals for the department in the years 1946-1949 were given as follows:

Table A-9. Claims Department Expense, Company X

1946	$ 177,913
1947	192,800
1948	217,384
1949	237,595
1946-1949	$ 825,692

The amount of the department's expense attributable to employee personal injury claims was estimated by the department bookkeeper at 45 per cent of the department total. The various matters handled by the department are the following:

Injuries to employees
Injuries to passengers
Injuries to trespassers (i.e., others on right of way)
Automobile accident injuries (personal and property)
Miscellaneous, including injuries to livestock, injuries to land by improper drainage, "Jim Crow" cases, misinformation cases, and fire damage.

Accepting the estimate of 45 per cent, we have employee claims expense equal to 45 per cent of $825,692, or approximately $372,000, as shown on Table 1 (line 3).

"Special investigation expense" is a name given by us to a group of expenses kept by the company in separate accounts for disbursements to non-employees for services in connection with claims. We obtained totals for the four years, against which we applied the bookkeeper's estimates of the amounts attributable to employee claims, as shown below:

Table A-10. Special Investigation Expense, Company X.

Stenographic 50 per cent of department total	$ 18,828.41
Photographic 50 per cent of department total	16,091.70
Travel 60 per cent of department total	86,523.06
Witnesses (independently estimated)	16,000.00
Total (Shown on Table 1, line 4, as $137,000).	$ 137,443.17

Stenographic or photographic work done by employees is not segregated in this account. But public or court stenographers, and independent photographers, are frequently employed either because events happen where company employees are not available, or because the evidence gathered will be more convincing if recorded by independent persons.

"Attorney expense" (appearing on Table 1, line 5) represents an allocation of the company's expenses for lawyers' services, including lawyers in the office of the General Counsel. This figure--$27,000--struck us as disproportionately low, and we inquired into it with particularity. It appeared on investigation to be accurately determined.

One striking feature about it is its smallness in relation to the attorney fees of claimants, shown as "claimants' legal expense" in the amount of $310,000 (Table 1, line 2). However, "claimants' legal expense" includes the amount paid by claimants' attorneys for investigation, stenography, photography, travel, and witnesses. Hence, the comparable figure for employers is not their "attorney expense" but the entire group of items constituting "Claims expense," which is $536,000 (Table 1, line 6). So viewed, the amount is not disproportionately low.

The account for attorney expense was arrived at by taking a General Attorney's estimate that 1 per cent of the company's annual legal expense was spent on employee injury cases. One per cent of this sum of $27,000.

This figure was checked from another angle by obtaining estimates of the proportions of their time spent on employee injury cases by affected members of the General Counsel's staff. These were:

Attorney A	5%
Attorney B	10%
Attorney C	20%
Attorney D	20%
Attorney E	5%
Total	60%

Assuming that the $27,000 total represented an average of $6750 per year, this would be reasonably equivalent to 60 per cent of an average legal employee's time, considering that some of the employees were of junior standing. It would seem inadequate, however, to allow for the accompanying stenographic service, sometimes estimated at about half the value of lawyers' services. Thus the true amount might be as much as one-half higher than the reported figure of $27,000.

Examining the matter from another angle, we found that Company X averaged 20 court-filed cases a year, of which about six underwent courtroom proceedings (not necessarily trial). About 18 days were actually spent in court annually on employee cases. Considering that the gathering of evidence is all handled in the claims department of Company X, the allowance of 60 per cent of an average lawyer's time for the strictly procedural handling of the cases seemed more than adequate. We have therefore accepted the company's estimate of cost of attorney services in FELA cases.

Claims expense - Company Y.

From Company Y we received figures on claims expense which appeared to be somewhat less accurately determined than those of Company X, but which have some comparison value. For the purpose of comparison, we present them with the employee pay-out totals.

Table A-11. Claims and Claims Expense, Company Y, 1946-1949.

Claims paid - employee injuries	$ 3,929,924
Claims expense	
Adjustment department (estimated as 50% of department payroll for 1949, times 4)	256,536
Legal department (estimated as 10% of actual department payroll for each of 4 years)	392,990
Witness expense, travel, and photography (estimated as $22,000 annually, times 4)	88,000
Total claims expense	$ 737,526
Claims expense as per cent of claims paid (738 divided by 3930)	18.8%

The corresponding figures for Company X, presented in similar form for comparison are these:

Table A-12. Comparison of Claims and Claims Expense, Company X.

Claims paid--employee injuries	$3,817,000
Claims expense	
Claims department	372,000
Special investigation	137,000
Attorney expense	27,000
Total claims expense	$ 536,000
Claims expense as per cent of claims paid (536 divided by 3,817)	14.0%

In comparing the statements of the two companies, the reader will note very great differences in the breakdown of elements. Company Y has an adjustment department expense about a third lower than the claims department expense of Company X, but a legal department expense more than ten times as large as the attorney expense of Company X. Company Y has a considerably lower special investigations expense. These differences probably reflect chiefly a different allocation of responsibilities between departments.

The more significant differences are those between the totals of claims expense. These tend to indicate that Company X may have an abnormally low claims expense.

Further comparison of claims expense ratios may be made with figures shown later, in connection with the Railroad Retirement Board Sample. This survey showed claims expense for 540 railroad companies, averaging 17.2% of claims (Table 7 in text of report; Table A-27 in Appendix II-B).

Taxpayers' Expense.

The estimate of taxpayers' expense for FELA claims is based on reports of the company showing number of court days used, and reports from the Administrative Office of United States Courts as to the cost per court day.

The company's report showed the following use of court days in 1949:

Table A-13. Courtroom days used by Company X in 1949.

2 cases tried to verdict, 6 days each.

3 cases with jury empaneled, opening statements made, and settlement reached, average 1½ days each.

1 case in chancery court, to avoid a release, 2 days.

Judges' days:

2 cases tried, 6 days each	12 judicial days
3 cases opened, $1\frac{1}{2}$ days each	$4\frac{1}{2}$ judicial days
1 case in chancery, 2 days	2 judicial days
Total judicial days, 1949	$18\frac{1}{2}$

Jurors' days:

5 days of jury empaneling	
24 jurors per day	120 juror-days
Balance of trial	
2 cases tried - 5 additional days each	
12 jurors each day	120 juror-days
3 cases settled, $\frac{1}{2}$ additional day each	
12 jurors each day	18 juror-days
Total juror-days, 1949	258

The cost of judicial days and juror days has been estimated on the basis of information furnished by the Administrative Office of United States Courts. For the purpose of the 1951 judiciary appropriations, that office estimated the then current annual cost per federal judge, including his attendant officers, equipment (library) and travel, at $44,000. They did not supply a number of working days, but we have arbitrarily adopted 250. This results in a cost per judge per day of $176. The office also supplied a cost per juror per day (fee plus mileage) of approximately $10, and explained that on the day when the jury is empanelled from 20 to 25 jurors are required to be on hand (we have used 24 in the preceding calculation).

These costs were estimated as current in 1950. But judicial costs, like others, were rising from 1946 to 1950. It would be impossible to make an accurate correction for each element of expense, but the most practible approximation may be to assume that these costs rose at the same rate as other per case costs. According to our calculations, the per-case cost in federal courts in the years 1946-49, in terms of 1950 costs, were roughly as follows:

Fiscal	1949	90% of 1950
"	1948	95% of 1950
"	1947	75% of 1950
"	1946	60% of 1950

Putting these figures together, we have the following rough estimate of taxpayers' costs for cases against Company X:

Table A-14. Taxpayers' Costs for Cases Against Company X.

Annual cost of judges and jurors at 1950 rates:

18½ judicial days at $176	$3266
258 juror days at $10	$2580
Total annual cost at 1950 rates	$5846
Estimate for 1949 - 90% of 1950	$ 5261
" " 1948 - 95% of 1950	$ 5555
" " 1947 - 75% of 1950	$ 4386
" " 1946 - 60% of 1950	$ 3509
Estimated total, 1946-1949	$18,711
Less filing fees for 80 cases at $15 per case	1,200
Net cost to taxpayers, 1946-49 (Shown on Table 1, line 7, as $18,000).	$17,511

Taxpayers' expense - alternative calculations.

Various alternative methods of calculation are possible. They were not used because they appear less closely related to known facts than the method adopted. But they are illustrated below for their indications regarding the accuracy of the method we have used.

One method is to determine the total costs of the courts for a year, divide by number of cases filed, and thus find an average cost per case filed. This average cost can be multiplied by the number of cases known to have been filed against Company X. A calculation of taxpayers' costs for Company X cases on this basis follows.

Table A-15. Taxpayers' Costs for Company X Cases, on basis of average cost per case.

Line		1946	1947	1948	1949
1.	Total U. S. District and Circuit Court expenses (excluding courts of patents, customs, etc.). Thousands of dollars for fiscal year.	$ 13,570	$ 15,720	$ 16,652	$ 17,601
2.	Cases filed in district and circuit courts, civil and criminal.	103,665	95,223	81,580	90,862
3.	Average expense per case.	$130.90	$165.08	$205.34	$193.71
4.	Number of suit-filed cases settled by Company X in calendar year.	18	11	21	30
5.	Taxpayers' expenses for Company X cases, by years (line 4 times line 3).	$2,536.20	$1,815.88	$4,312.14	$5,811.30
6.	Taxpayers' expenses for Company X cases, 1946-1949.	.....	$14,295.52	.....	

Notes on Table A-5

Line 1. Calculated from Table H, Annual Reports of the Administrative Office of the United States Courts, 1946-1949 inclusive.
Line 2. Calculated from Tables B-1, C-1, and D-1, Annual Reports of AOUSC (above
Line 3, 5, and 6. Calculated from preceding figures.
Line 4. Figures reported by Company X.

Table A-15 is accurate only to the extent that FELA cases occupy the courts' time to the same extent, on the average, as other cases. The impression is generally held that they occupy more time, since a larger per cent are likely to be tried, and trials when held are apt to be longer. This is one of several possible explanations for the fact that taxpayers' expense as calculated in Table A-15 falls about 20 per cent under the calculation in Table A-14.

The most glaring gap in our calculation of taxpayers' expense is our inability to allow for differences between the cost of trials in state courts, as compared with federal courts. Despite the generous cooperation of various Illinois Circuit Judges and Circuit Court clerks, we have not been able to assemble figures which we consider significant with relation to costs of jury trials in state courts. We have indications that they are considerably lower than costs in federal courts. In recent conversations with Cook County judges, one stated that the taxpayers' cost per day of a jury trial is about $250. Another said $300. Neither claimed to have made the analysis himself, and neither was able to send us to the originator of these estimates.

In dismissing a case on the ground of forum non conveniens, Judge Samuel B. Epstein estimated that the average FELA case costs the taxpayers over one thousand dollars. He declared:

"This court will take judicial notice that the trial of each of these migratory cases involves a cost to our taxpayers of over $1,000 per case, based on an average of a five-day jury trial; the salary of a presiding judge for such period is approximately $350.00; the jury fees approx-

imately $300; and, in addition thereto, the salaries of clerks, bailiffs, cost of heat, light and other services certainly aggregate an amount in excess of $1000 per case. Upon that basis the taxpayers of Illinois will be burdened by an expense of about one and a half million dollars in connection with these cases, whereas the filing fee is only $23 per case." (Hart v. Southern Pacific Company, Superior Court of Cook County, Illinois, No. 47-S-9623, opinion filed Jan. 28, 1949).

Judge Epstein's observations were probably based in part on an affidavit filed by the defendant in the same case, estimating the cost of a case as "in excess of $1000." But the affidavit contains less corroborative detail than the opinion.

In a case in St. Clair County (East St. Louis), Circuit Judge Maxwell estimated taxpayers' costs (not analyzed) at $600 to $900 for a jury-tried FELA case. (Kelly v. Thompson, Trustee, Order of Jan. 27, 1949, St. Clair County Circuit Court No. 13578).

On the basis of these estimates, it would appear that taxpaers' costs for cases against Company X, if all prosecuted in state courts, would be considerably less than the $18,000 figure we have used. In practice, FELA cases are tried in both state and federal courts. We have been unable to obtain significant figures on the distribution among the different courts, and we regard our state court cost figures as unreliable. Hence, we have submitted a cost estimate based solely on federal courts, with the warning that it presumably overstates true taxpayers' expenses. Because of the small contributtion of taxpayers' expenses to total cost, the error in this item is of very little significance to our study.

APPENDIX II-B
(Supplementing Part II, Sub-Part B, of the text)

The Railroad Retirement Board Survey.

The term "RRB Survey" is used in this appendix to refer to the publication, "Work Injuries in the Railroad Industry 1938-40," published in 1947 by the U. S. Railroad Retirement Board. In some aspects, this survey covers the aggregate of Railroad company work injuries from the beginning of 1938 to the end of 1940. For purposes of closer analysis, however, the survey used data drawn from twelve selected months within the three-year period.

Most of the data which we have copied from the RRB Survey for the present analysis have been drawn from the detailed tables presented in Volume 2 of the survey. We designated these as "RRB Table C-22," "RRB Table C-25," and so on, adding the letters "RRB" to the designation used in the RRB survey. In one instance we have resorted to a summary table given in the main body of the survey and contained in Volume 1. This is called Table 3 in the survey; we call it "RRB Table 3." References to tables not preceded by the letters "RRB" are to tables in the Illinois Study.

Net benefits

Net benefits in the RRB sample, as in Company X, represent the gross benefits, or amounts paid out by employers in settlements, less the legal expenses of claimants. However, the RRB survey does not present aggregate figures either for gross benefits or for attorney fees. It does present figures from which these amounts may be approximated, and the following comments explain how the figures supplied by the RRB survey have been used to estimate the aggregates desired for the present study.

Gross benefits--attorney cases

In finding gross benefits, we have sought to determine separately the amount of benefits in cases where claimants were represented by attorneys, and the amount where claimants were unrepresented, since there is no need for deducting attorney fees in the latter group of cases. Among the attorney cases, we have also segregated, wherever possible, the cases in which settlement was made without the filing of suit from cases in which suit was filed before settlement made. We make this separation because the RRB Survey shows different rates of attorney fees according to whether suit was or was not filed.

Table A-21 shows the calculation of gross benefits in attorney cases. Cases are classified by types of injury, because that is the form in which figures were supplied by the RRB survey. The types, which are sometimes abbreviated in the tables, are:

1. Injuries resulting in death (fatal).
2. Injuries resulting in permanent total disability.
3. Injuries resulting in permanent partial disability (presumably including disfigurement cases).
4. Injuries resulting in permanent total disability, lasting for four or more days.

In each type of injury, the most applicable figures supplied by the RRB survey are the number of injuries and the average payment per injury. Multiplying one times the other, we have reconstructed for each type of injury the aggregate amount paid in all the injuries covered by the RRB survey.

The degree of particularity supplied by the RRB figures varies considerably among the various types of injury. The most complete figures are those for fatal injuries, which include separate numbers of cases and average payments according to whether suit was or was not filed, all limited to cases settled under FELA. For the other three injury types, separate average payments are not supplied. For permanent total and temporary total disabilities, separate numbers of cases are also lacking. And for permanent partial disability, we are not even supplied with an average payment limited to FELA cases, nor to attorney cases, and are obliged to use an average payment figure for all types of permanent partial disability injuries.

As far as gross benefits are concerned, no error is introduced by the absence of breakdown between suit and no-suit cases. The absence of a breakdown between attorney and non-attorney cases, and between FELA and other cases, in relation to permanent partial disabilities, is a more serious matter. Payments are generally believed to run higher under FELA than under other laws, and in attorney cases than in non-attorney cases.

The best guide to the extent of error involving attorney representation is an analysis of an entirely different group of cases in which the RRB survey shows amounts paid for different categories of permanent partial disabilities. This analysis (RRB Table C-25), shows the following variations:

Category	Number	Average Settlement
Non-attorney	359	$ 2477
Attorney, but no suit	66	6301
Attorney, suit filed	178	8316

These figures indicate that the average settlement amounts in the permanent partial disability cases represented by attorneys, if known, would be above the average of all cases, which we have been obliged to use in Table A-21. As a result, we have presumably understated the average payments in attorney cases for permanent partial disability, and have correspondingly understated aggregate attorney fees.

With regard to settlements for temporary total disability, our error is in the other direction. We have had to use for all attorney cases a figure which actually represents payments only in the suit-filed cases. This is presumably higher than the true figure. Hence, in this type of injury we have presumably overstated payments made in attorney cases, and therefore overstated aggregate attorney fees. We are unable to estimate the extent to which our divergent errors cancel each other.

Table A-21. Calculation of Gross Aggregate Cash Benefits in Attorney Cases

Line No.	Column Number	Suit-filed cases No. cc. 1	Suit-filed cases Ave. Amt. 2	Suit-filed cases Aggregate Amount 3	No-suit-filed cases No. cc. 4	No-suit-filed cases Ave. Amt. 5	No-suit-filed cases Aggregate Amount 6	All attorney cases No. cc. 7	All attorney cases Ave. Amt. 8	All attorney cases Aggregate Amount 9
1.	Fatal injuries	84	7,077	594,468	90	5,409	486,810	174	6,214	1,081,278
2.	Permanent total Disability							51	15,489	789,939
3.	Permanent partial Disability	101	1,947	196,647	81	1,947	157,707	182	1,947	354,354
4.	Temporary total Disability							213	1,226	261,138
5.	Total, all injuries							620		2,486,709

Notes on Table A-21

Line

1. Figures in columns 1, 2, 4 and 5 from RRB Table C-15. All figures restricted to cases settled under the FELA, with surviving widow or children. Figures in columns 3, 6, 7, 8 and 9 calculated from figures in columns 1, 2, 4 and 5.

2. Figures in columns 7 and 8 from RRB Table C-18. Figure in column 9 calculated from figures in columns 7 and 8. All figures restricted to FELA cases, without exclusion.

3. Figures in columns 1 and 4 from RRB Table C-29. Figure in columns 2 and 5 from RRB Table C-21. This figure represents the average of all payments in cases with or without attorneys, and includes cases settled under laws other than FELA. Segregated figures for this type of injury were not presented. Figures in columns 3, 6, 7, 8, and 9 calculated from preceding figures.

4. Figure in column 7 from RRB Table C-31: number of attorney cases settled under FELA.
   Figure in column 8 from RRB Table C-22b. This is actually the figure for suit-filed cases, no figure for all attorney cases being supplied.
   Figure in column 9 calculated from columns 7 and 8.

5. Figures in columns 7 and 9 are totals of columns.

Gross benefits--non-attorney cases.

Table A-22 repeats the total figures for settlements in attorney cases, and adds figures for aggregate settlements in non-attorney cases. The principal weakness in this table is the same as in Table A-21--the necessity of using a figure for permanent partial disability payments which is not differentiated between FELA cases and cases settled under other laws. Containing these two errors, it probably tends to understate not only the attorney-represented part of the FELA cases, but also the total of all FELA cases.

Table A-22. Calculation of Aggregate Cash Benefits in Attorney and Non-attorney cases.

	Attorney cases			Non-attorney cases-			All cases	
	No. cc.	Ave. Amt.	Aggregate Amount	No. cc.	Ave. Amt.	Aggregate Amount	No. of cases	Aggregate Amount
Line Col. No.	1	2	3	4	5	6	7	8
1. Fatal injuries	174	6,214	1,081,278	230	6,801	1,564,230	404	2,645,508
2. Permanent total Disability	51	15,489	789,939	36	9,279	334,044	87	1,123,983
3. Permanent partial Disability	182	1,947	354,354	939	1,947	1,828,233	1,121	2,182,587
4. Temporary total Disability	213	1,226	261,138	11,679	177	2,067,183	11,892	2,328,321
5. Totals	620		2,486,709	12,884		5,793,690	13,504	8,280,399
6. Percents-amounts			30%			70%		100%
7. Percents-number of cases	5%			95%			100%	

Notes on Table A-22

Columns 1, 2 and 3 are from the preceding table, Table A-21.
Columns 7 and 8 are calculated from columns 1 through 6.
Column 6 is the product of columns 4 and 5.
Columns 4 and 5 are explained below.

Line

1. From RRB Table C-15. FELA cases with surviving widow or children.
2. From RRB Table C-18. FELA cases.
3. Figure in column 4 from RRB Table C-29. FELA cases.
   Figure in column 5 from RRB Table C-21. This figure includes attorney and non-attorney cases, and cases under all laws. No segregated figures were presented.

Line

4. Figure in column 4 computed from figures in RRB Table C-31 for FELA non-attorney cases "fully acknowledged" (11,509) and "other" (170). Figure in column 5 from RRB Table C-22a. This figure is an average of all FELA cases in which no suit was filed, regardless of whether or not an attorney was retained.
5. Totals of preceding lines.

Attorney fees

The RRB Survey does not furnish figures on attorney fees for the same group of cases on which it presents average payment figures. But it presents an independent sampling of cases in which attorney fees were accurately determined for attorney and non-attorney cases (RRB Tables C-24, C-25). In order to present these fees in proper relation to average payment groups, we have reduced the fees to percentages, and calculated the fees which would have been paid at the same rate, in the cases on which we have the average payments.

For example, we determine from RRB table C-24 that the average fee in a suit-filed fatality case was 25.11 per cent (Table A-23). We then apply this to the amount of payments reported for all suit-filed fatality cases ($594,468), and find aggregate attorney fees for these cases to have been approximately $149,271 (Table A-25).

The calculation presents more difficulty in the categories of permanent total and temporary total disabilities, where we do not know the separate totals for suit filed cases and no-suit cases. For these cases, we have used the RRB attorney fees record on such cases to construct a weighted average of fees for both classes (Table A-24). This is in turn applied to the known aggregate of payments for the particular type of injury (Table A-25).

Tables A-23, A-24, and A-25 follow:

Table A-23. Calculation of Attorney Fees Rates for Fatal Injuries and Permanent Partial Disability Injuries

Line No.	Column no....	Average Settlement 1	Average Fee 2	Average percent of Fee 3
	Fatal Injuries			
1.	Suit filed	7,006	1,759	25.11
2.	No suit filed	4,593	829	18.05
	Permanent Partial Disability			
3.	Suit filed	8,316	2,664	32.03
4.	No suit filed	6,301	1,692	26.85

Notes on Sources (Table A-23)

Column 3 is calculated from columns 1 and 2.
Columns 1 and 2 are explained below.

Line

1. From RRB Table C-24. FELA cases.
2. From RRB Table C-24. FELA cases.
3. From RRB Table C-25 (not limited to FELA cases).
4. From RRB Table C-25 (not limited to FELA cases).

Table A-24. Calculation of Attorney Fee Rates for Permanent Total and Temporary Total Disability Injuries

Line No.	Column No....	No. of cases 1	Average Settlement 2	Aggregate Settlements 3	Average Fee 4	Aggregate Fees 5	Percent agg. fees 6
	Permanent Total						
1.	Suit filed	118	13,930	1,643,740	4,339	512,002	
2.	No suit	26	10,360	269,360	2,873	74,698	
3.	Sum			1,913,100		586,700	30.67
	Temporary Total						
4.	Suit filed	90	3,625	326,250	1,077	96,930	
5.	No suit	48	1,879	90,192	469	22,512	
6.	Sum			416,442		119,442	28.68

Notes on Table A-24

Column No.

1,2,4. All figures from RRB Table C-25, except sums, which are computed. (Figures not limited to FELA)
3. Product of columns 1 and 2.
5. Product of columns 1 and 4.
6. Quotient of columns 5 and 3.

Table A-25. Calculation of Attorney Fees for Aggregate Payments in Attorney Cases

Line	Column No....	Aggregate Settlements 1	Rate of Fees 2	Aggregate Fees 3
	Fatal Injuries			
1.	Suit-filed cases	594,468	25.11	149,271
2.	No-suit cases	486,810	18.05	87,869
	Permanent Total Disabilities			
3.	Suit and no-suit cases	789,939	30.67	242,274
	Permanent Partial Disabilities			
4.	Suit-filed cases	196,647	32.03	62,986
5.	No-suit cases	157,707	26.85	42,344
	Temporary Total Disabilities			
6.	Suit and no-suit cases	261,138	28.68	74,894
7.	All injuries	2,486,709	26.53	659,638

Notes on Table A-25

Line	Column	
1.	1.	Table A-21, col. 3
	2	Table A-23, col. 3
2	1	Table A-21, col. 6
	2	Table A-23, col. 3
3	1	Table A-21, col. 9
	2	Table A-24, col. 6
4	1	Table A-21, col. 3
	2	Table A-23, col. 3
5	1	Table A-21, col. 6
	2	Table A-23, col. 3
6	1	Table A-21, col. 9
	2	Table A-24, col. 6

In lines 1-6, column 3 is the product of columns 1 and 2. In line 7, columns 1 and 3 are sums; column 2 is their quotient.

Calculation of net benefits

The calculation of net benefits (Table A-26) is almost self-explanatory. In attorney cases, net benefits are the gross aggregate pay-cuts less the amount of attorney fees. In non-attorney cases, gross pay-outs are net benefits.

Table A-26. Calculation of Net Cash Benefits in Attorney and and Non-attorney Cases

Line	Item	Amount
1.	Gross aggregate benefits in attorney cases (Table A-22, line 5)	$ 2,486,709
	Less:	
2.	Aggregate attorney fees in attorney cases (Table A-25, line 7)	659,638
3.	Net aggregate benefits in attorney cases (Line 1 less line 2)	1,827,071
	Plus:	
4.	Gross aggregate benefits in non-attorney cases (Table 22, line 5)	5,793,690
5.	Net benefits in attorney and non-attorney cases (Shown in Table 2, line 1 as $7,621,000)	$ 7,620,761

Claimants' legal expense

The second item in Table 2 is "Claimants' legal expense." For reasons previously explained, this consists wholly of attorney fees. These have already been calculated in order to determine net benefits, in Table A-26, line 2, as $659,638. For Table 2 of this study they are rounded off to $660,000 (Table 2, line 2).

Employers' Claims Expense

The RRB survey collected complete figures from railroads regarding legal expense for work injuries in 1938-1940, as well as for pay-outs on work injuries. These figures permit us to calculate the ratio of legal expense to pay-outs, and apply this per cent to the pay-outs covered by the survey. The computation is shown in the following table:

Table A-27. Calculation of Employers' Claims Expense

Line		
1.	Cash payments to employees or survivors in Railroad work injuries, 1938-1940. (RRB Table C-34)	$ 35,915,237
2.	Legal expense of employers for same injuries, same period (RRB Table C-34)	6,163,064
3.	Legal expense as percent of cash payments (computed from lines 1 and 2	17.160026%
4.	Cash payments in FELA cases covered by RRB Survey (Table A-22)	8,280,399
5.	Estimated legal expenses of employers for FELA cases in RRB Survey (computed from lines 4 and 5) (shown on Table 2, line 3, as $1,421,000)	1,420,919

The RRB survey does not explain how the railroads determined the amount of their legal expense attributable to work injuries, as compared with the amount attributable to other legal activities of the company. We presume that estimates were used, as in the case of Company X in the Illinois survey (see RRB survey, Appendix H, Schedule 1).

The RRB figures with respect to total pay-outs, 1938-40, are not restricted to FELA cases, and therefore include pay-outs under other laws. Presumably the same is true of their estimates of legal expense. Nevertheless, we believe that the figures are fairly representative of FELA operations, since it appears that FELA cases constituted about 80 per cent of the pay-outs in the FELA sample. Our conclusion in this regard apparently agrees with that of the editors of the survey, who use their unsegregated figures as a basis for criticizing excessive expense under the FELA system, as compared with a Workmen's Compensation system.

Taxpayers' Expense

For the RRB Survey cases, we do not have any significant information either on the number of judges' and jurors' days used, nor on the costs of judges' days for those years. We have therefore calculated taxpayers' expenses by the less accurate method of estimating an average expense per case filed in federal courts, and multiplying it by the number of cases filed from the RRB sample. This method of calculation, when applied to Company X, resulted in an estimate about one-fifth lower than an estimate made by determining the numbers of judges' and jurors' days used. Hence, it is probable that the figure we present here somewhat understates the true taxpayers' expense.

The bases of our calculation of Taxpayers' Expense are shown in Table A-28, which follows:

Table A-28. Calculation of Taxpayers' Expense

Line No.	Item	Amount or No.
1.	Expenses of U.S. District and Circuit Courts, fiscal 1940	$10,102,447
2.	Number of cases filed in same courts	71,581
3.	Taxpayer's gross average cost per case	$141.13
4.	Number of suit-filed cases in RRB survey	385
5.	Taxpayers' gross cost for FELA cases in RRB survey	$54,335
6.	Filing fees of claimants for 385 cases at $15 per case	$ 5,775
7.	Net taxpayers' cost for FELA cases in RRB sample (shown in Table 2 as $49,000)	$48,560

Notes on Table A-28

1. Annual Report of the Director of the Administrative Office of the United States Courts, 1940, Table 33. We have taken the total there shown, and subtracted the items attributable to courts which do not handle FELA cases--Court of Customs and Patent Appeals, Customs Court, and Court of Claims.
2. Same source, Tables 1, 3, 11.
3. Computed from lines 1 and 2.
4. The RRB survey does not show number of suits filed for the same 13,504 FELA cases on which it gives the breakdowns used in our Table A-22. However, it does give the number of suits filed for a group of 13,820 cases apparently comprising largely the same sample. The number of suit-filed cases in this slightly larger group was 394 (RRB Table 3). A corresponding fraction of the 13,504 cases used in our calculations is 385, the figure used in the table above.
5. Computed from lines 3 and 4.
6. The figure of $15 as a filing fee per case was supplied us by the Clerk of the District Court for the Northern District of Illinois.
7. Line 5 less line 6.

Alternative Calculation of Costs in FELA Survey Cases

In the foregoing pages, we have presented a method of estimating the costs of reparation in FELA cases covered by the RRB survey. The RRB data also permit a rough calculation of costs in all work injuries covered by the survey, including those settled under Workmen's Compensation and other laws. This calculation can be made much more simply, and with less probable error, than the calculation on FELA cases only. It is presented in this subordinate fashion because it is less apposite to a comparison of systems. Rather, it involves a potpourri of several systems of reparation. However, it will be seen to vary only insignificantly from the calculations based (so far as possible) on FELA cases alone. The alternative calculation follows:

Table A-29. Costs of Reparation under All Laws in RRB Survey Cases

		In dollars		In percents
Net benefits to claimants		$10,860,000		77.0
Operating expenses				
Claimants' legal expense	$1,112,000		7.9	
Employers' claims expense	2,054,000		14.6	
Taxpayers' expense	71,000		.5	
Total operating expenses of system		3,236,000		23.0
Total Cost to Society of System		$14,096,000		100.0

The derivation of the figures shown in Table A-29 as "Net Benefits to Claimants' is shown in Table A-30, which follows:

Table A-30. Calculation of Net Benefits to Claimants

Line		
1.	Annual average payments to beneficiaries, 1938-1940	$11,972,000
	Less:	
2.	Total employee expenditures, excluding medical and funeral.	1,112,000
	Remainder:	
3.	Net Benefits to Claimants, as shown in Table A-29	$10,860,000

Notes on Table A-30

Line

1. Figure based on reports by railroad companies, shown in RRB Table 48, RRB Survey p. 182, and text, p. 183. (Exact amount, $11,971,746). From reports of individual injuries over the same period, compiled by the RRB survey, the slightly higher total $12,130,000 was computed (RRB Survey, p. 183, note). We have used the former figure because the RRB Survey elected to use it.

2. Figure based on sample interviews with claimants, given by RRB Survey, p. 183. This figure includes certain items in addition to the attorneys' fees. But it appears that the additional items are less than five percent of the total expense to claimants. See RRB Survey, Appendix C, Table C-24.

Claimants' Legal Expense (alternative calculation). The figure of $1,112,000, shown as "Claimants' Legal Expense," is reported as stated in RRB Survey, page 183. This estimate was based upon interview reports, the results of which are set forth in RRB Survey, Appendix D-4.

Employers' Claims Expense (alternative calculation). The figure of $2,054,000 shown for "Employers' Claims Expense," appears on pages 182 and 183 of the RRB Survey. The survey does not show exactly how the employers determined this sum, but it shows that they were asked to explain their basis of determination (Appendix H, Schedule 1).

Taxpayers' Expense (alternative calculation). The RRB Survey makes no attempt to estimate costs to taxpayers to administer reparation systems. A short section on "Cost to the Government" is concerned only with the cost of public assistance to destitute employees who do not receive cash reparation.

In order to estimate expense to taxpayers, we have had to resort to a roundabout method which we believe will indicate the approximate magnitude of taxpayers' expense, although it cannot be regarded as highly accurate. The computation follows:

Table 31. Calculation of Taxpayers' Costs

Line		
	Number of settled claims covered by RRB Survey	
1	Settled under the FELA	13,504
2	Settled under other laws	6,213
3	Total settlements covered	19,717
4	Number of suit-filed FELA cases included in figure listed above	385
	Taxpayers' costs for FELA suit-filed cases	
5	Taxpayers' expense for U.S. courts open to FELA cases, fiscal 1940	$10,102,447
6	Number of cases of all types filed in same courts, same year	71,581

7	Average taxpayer's expense per suit-filed case (line 5 divided by line 6)	$ 141.13
8	Aggregate taxpayers' expense for FELA cases (line 4 times line 7)	$ 54,335
9	Aggregate filing fees for same cases (385 times $15)	$ 5,775
10	Net taxpayers' expense for FELA cases (line 8 less line 9)	$ 48,560
	Taxpayers' estimated expense for non-FELA cases	
11	Average taxpayers' expense per case settled under the FELA (including cases settled without suit)	$ 3.5960
12	Aggregate taxpayers' expense for non-FELA cases, assuming same per-case expense (line 11 times line 2)	$ 22,342
13	Aggregate net taxpayers' expense for FELA and other settled cases in RRB survey (line 10 plus line 12) (shown on Table A-29 as $71,000)	$ 70,902

Notes on Table A-31

Line

1 From RRB Tables C-15, C-18, C-29 and C-31; same figure previously shown in Table A-22, line 5, col. 7.

2 From RRB Tables C-15, C-18, C-29, and C-31.

3 Sum of lines 1 and 2.

4. The RRB survey does not show what portion of the 13,504 FELA cases entered in line 1 were suit-filed. But it shows in Table 3 (RRB Survey, p. 44) a group of 13,820 cases settled under the FELA in which 394 were suit-filed. A corresponding fraction of the 13,504 cases would be 385, the figure given here.

5 From annual Report of the Director of the Administrative Office of United States Courts, 1940, Table 33. From the total expenses for all federal courts except the Supreme Court, we have deducted the items relating to special courts (Patents, Customs, and Claims) which never handle FELA cases.

6 From Annual Report of the Director of the Administrative Office of United States Courts, 1940, Tables 1, 3, and 11.

APPENDIX III-A
(Supplementing Part III, Sub-Part A, of the text)

Time and Place

- The aggregate chosen for analysis in Table 3 is the total amount of cash benefits under Illinois Workmen's Compensation Act for the years 1946-1949, inclusive, as reported in:

Illinois Dept. Labor, Annual Report on Industrial Accidents in Illinois, 1948, Part II, pages 4, 14, 16.
Same, 1949, Part II, page 13.

These reports are based on amounts of compensation paid in cases closed during the years reported on. The total amount paid in any case shows up in the report for the year in which the case was closed, although a part of the compensation may have been paid in earlier years. The error resulting from this lag is minimized by the fact that we have used four successive years.

A more serious problem results from a question as to the completeness of these statistics. The insurance companies' reports to the Insurance Department indicate a higher aggregate than do the employers' reports to the Industrial Commission. The Labor Department statisticians believe that the total of compensation cash benefits paid in 1949 is not $15,270,000, as shown by the Industrial Commission reports, but about $20,000,000, of which about 15 millions are paid by insurance carriers, and 5 millions by self-insurers. (Annual Accident Cost in Illinois--An Estimate, issued May 1951, pp. 5, 12).

While we accept the validity of Department's estimate for the purposes of its report, we have preferred to use the reported totals of the Industrial Commission for our own. Our interest is primarily in cash benefits. These are reported by the Industrial Commission, but can only be indirectly estimated if we start from Insurance Department figures.

If we are wrong in our aggregate, our error will affect only the smallest of our ratios--the ratio of Taxpayers' Expense. The larger ratios of Claimants' Legal Expense and Employers' Claims expense are determined in such a way that they are not affected by any error in the aggregate of Claims Paid.

Net benefits to claimants

Table 3 shows an amount of net benefits to claimants of $49,391,000. This amount was found by taking the reported aggregate of claims paid, and deducting our estimate of claimants' legal expense as follows:

Table A-40. Calculation of Net Benefits to Claimants Under Illinois Workmen's Compensation Act, 1946-1949.
(in thousands of dollars)

Gross pay-outs to claimants	$ 59,253
Less:	
Aggregate claimants' legal expenses	9,862
Aggregate net benefits to claimants-	$ 49,391

Our methods of determining the gross pay-outs and the aggregate claimants legal expenses are explained in the paragraphs to follow.

The constitutent elements in the reported total of gross pay-outs are shown below in Table A-41. These constitutents are offered for two purposes--(1) to permit correlation of our figures with those published by the Illinois Industrial Commission, and (2) to disclose the basis of certain breakdowns used in estimating claimants' attorneys' fees, to be explained later.

Table A-41. Aggregate Claims Paid

Line No.	Column... Year	1 All Cases	2 Cases "regularly closed"	3 "Second final" cases	4 "Special fund" cases	5 "Regular" fatal cases	6 Non-fatal cases
		(in thousands of dollars)					
1	1946	14,833	14,091	733	9	1,782	13,042
2	1947	13,641	12,807	822	12	1,290	12,339
3	1948	15,509	14,576	922	11	1,782	13,716
4	1949	15,270	14,251	1,005	14	1,430	13,826
5	Totals	59,253	55,725	3,482	46	6,284	52,923
		(in percentages of total)					
6	1946-49	100.00	94.04	5.88	.08	10.61	89.32

Notes on Table A-41

Figures in columns 2-5 inclusive taken from Illinois Department of Labor, Annual Report on Industrial Accidents, Part II, 1948 and 1949.

The figures in column 1 were found by adding those in columns 2, 3, and 4. The figures in column 6 were found by subtracting those in column 4 and 5 from those in column 1.

The table presents a breakdown of total cases closed on two different planes, which overlap. Columns 2, 3, and 4 break the cases down on a procedural basis; together, they comprise the totals in column 1. Columns 4, 5 and 6 break down the cases in terms of types of injury or claim; they also add up to the totals in column 1. The procedural basis of breakdown is shown because it discloses the form in which the figures are presented in the source reports of the Industrial Commission. The type-of-injury breakdown is shown because it is a factor in our calculation of claimants' legal expense.

Claimants' legal expense

Four informants, all officials of the Industrial Commission, offered opinions on the fees charged by claimants' attorneys, both as to the proportion of cases in which fees are charged, and the percentage of fees when charged. These estimates, independently offered, are given below, together with the averages computed.

Table A-42. Rates of Claimants' Legal Expense

	Informant A	Informant B	Informant C	Informant D	Average Computed
For all types of injuries					
Percent of claims in which claimant has attorney	98%				---
Percent of fee in attorney cases	20%				---
For non-fatal injuries					
Percent of claims in which claimant has attorney		90%	95%	No est.	92.5%
Percent of fee in attorney cases		20%	20%	20%	20%
For fatal injuries					
Percent of claims in which claimant has attorney		25%	25%	No est.	25%
Percent of fee in attorney cases		5%	No est.	4%	4.5%

Since three of the informants indicated a substantial difference between fatal and non-fatal cases, the estimates of Informant A were disregarded as being based on a less careful analysis of the situation.

The explanation of the significant difference between fatal and non-fatal cases appears to lie in the fact that the main subject of disputes in compensation cases--the extent of injury--is eliminated from the case.

In order to translate these averages into proportions of total claims paid, we must refer back to Table A-41 showing the breakdown of fatal and non-fatal claims. The fatal claims are divided between the "regularly closed" and the "special fund." The "regularly closed" cases are those in which the injured workman is survived by dependents who are entitled to compensation for his death. The "special fund" cases are those in which there are no surviving dependents,

and the employer (or insurer) is required to pay a flat sum into the "special fund," maintained by the Industrial Commission for use in certain non-fatal cases. We have assumed that there is no attorney fee paid in the "special" fund cases, since the sum is received by the Industrial Commission itself.

We now take the amounts of compensation reported paid on each class of cases, and determine what portion of this was paid in attorney cases. We then apply the estimated fee percentages against these payments. The calculation follows.

Table A-43. Calculation of Aggregate Claimants' Attorneys' Fees

	Non-fatal Cases	Fatal "regular" Cases	Fatal "special" Cases	All Cases
Gross claims paid, in thousands of dollars (from Table A-41, line 5)	52,923	6,284	46	59,253
Percent of cases of each class in which claimant has attorney (from Table A-42)	92.5%	25%	None	----
Aggregate claims subject to attorney fee in thousands of dollars	48,954	1,571	None	50,525
Average percent of fee in cases subject (from Table A-42)	20%	4.5%	None	----
Aggregate claimants' attorneys' fees in thousands of dollars	9,791	71	None	9,862

The figure of 9,862, shown at the lower right of the Table A-43, appears on Table 3 of the report as $9,862,000.

Employers' Claims Expense

The estimate of claims expense incurred by insurers was based on the financial reports of two of the four largest compensation-writing companies having home offices in Illinois. Their figures related to all their compensation business, including that in other states. No segregated figures on Illinois business alone were obtainable.

These two companies reported the following amounts of claims expense paid (totaling allocated and unallocated), and of cash benefits paid, for the years in question.

Table A-44. Claims Expense Ratio

	Claims expense paid	Cash benefits paid
Company A	$ 3,076,000	$ 10,370,000
Company B	3,169,000	12,278,000
Total	$ 6,245,000	$ 22,648,000

From these totals, we calculated a ratio of claims expense to cash benefits of 47.5742%. This percent was applied to the total reported Illinois cash benefits of $59,253,000 to find the estimated employers' claims expense of $16,339,000 which appears on Table 3.

The companies whose reports were used supplied us with figures on two different bases. On one, which might be called the "accrual basis," they reported the "claims incurred" during a given year (although perhaps paid later). On the other, which might be called a "cash basis," they reported the "claims paid" during the year. We chose the "claims paid" figures because these were the only figures with respect to which we could obtain a separation of cash benefits from medical benefits in both companies. Moreover, "claims paid" appeared to offer us a better comparison with our FELA figures, which were available only on a "paid" basis.

The companies reported separate figures also for "claims expense incurred," and "claims expense paid," but the two sets of figures were nearly identical. The "expense paid" figures were used, since they should be more comparable to "claims paid."

No provision was made for claims expense which might be paid by insured employers beyond that paid by their insurers. We were advised that their separate expense would be negligible.

Taxpayers' Expense--Industrial Commission

The expenditures of the industrial commission were derived from the Annual Reports of the Department of Finance, State of Illinois, for the fiscal years 1946-1949, inclusive.

These figures do not correlate perfectly with the figures on payments, because they are supplied only on a fiscal year basis, while the payment figures are supplied on a calendar-year basis. This lack of correlation may be partially offset by the fact that the cases closed in any given year are partly the result of Commission labors in the preceding year. With this consideration in mind, we have used the figures for the fiscal years which partially precede the calendar years for which other figures are presented.

The error arising from lack of correlation will be relatively small in any event, in view of the stability of Industrial Commission expenses from year to year, and the small part of total cost which these expenses contribute. The expense figures for the Industrial Commission, by fiscal years, were as follows:

Table A-45. Industrial Commission Expense

1946	$448,111
1947	511,134
1948	598,280
1949	541,121
Total	$ 2,098,646

(from Annual Reports, Department of Finance)

The entire cost of the Industrial Commission in the years indicated has been assigned as cost of administering Workmen's Compensation cash benefits. Commissioners and officers of the commission stated that a negligible proportion of their time was devoted to other activities, such as administration of the Health and Safety Act. Interviews also indicated that medical benefits occupied no detectible fraction of the Commission's time.

The claims payment figures of the Commission include payments under the Workmen's Occupational Disease Act as well as under the Workmen's Compensation Act (see Annual Report on Industrial Accidents in Illinois, 1949, Part II, page 12). Although Occupational Disease cases are said to consume more time per case, the resulting distortion cannot be great. The ratio of occupational disease compensation to all compensation varied in the years 1946 to 1949, inclusive, from 0.8 percent to 1.8 percent (see Annual Report, 1949, Part II, page A-11).

Taxpayers' Expense—Circuit Courts

Information on costs to taxpayers of Workmen's Compensation cases in the courts proved very elusive. For most of the years under study, the number of appeals ("certioraris") from the Industrial Commission to the Circuit Courts could not even be obtained. For the most recent years, certioraris were reported on a fiscal year basis, and are shown below in comparison with numbers of compensable cases closed, on a calendar year basis.

Table A-46. Proportion of Certioraris

Calendar year	Fiscal year	No. cases closed	No. certioraris
1946		51,039	
	1946-1947		Not available
1947		46,856	
	1947-1948		Not available
1948		46,000	
	1948-1949		Not available
1949		42,381	
	1949-1950		118
1950		46,038	
	1950-1951		110

Notes on Table A-46

Numbers of cases closed for the years 1946-1949 were obtained from the Department's Annual Report of Industrial Accidents; number of certioraris were obtained from Annual Report of the Department of Labor, 1949-1950, page 63. The most recent figure in each category was supplied by courtesy of the Chief of the Division of Statistics and Research, Department of Labor.

In view of the relative constancy of numbers of cases from year to year, and the small variation in certioraris from fiscal 1950 to fiscal 1951, the figure of 118 was assumed as the number of certioraris in each of the years from 1946 to 1949, inclusive, yielding a total of 472 for the four years.

For reasons which will appear, it became important to divide these between Cook County cases and down-state cases. On this point, the only information available was the division of accidents by place for the years 1948 and 1949. For the year 1948, these were divided between Chicago and outside Chicago (Annual Report of Industrial Accidents, 1948, Part I, page 24); for the year 1949, they were divided between Cook County and outside Cook County (Annual Report of Industrial Accidents, 1949, Part I, page 12). The comparative figures were as follows:

Table A-47. Geographical Distribution of Cases

1948				1949			
Chicago	23,180	--	45.8%	Cook	26,260	--	54.3%
Outside	27,393	--	54.2%	Outside	22,145	--	45.7%
Illinois	50,753	--	100%	Illinois	49,405	--	100%

These figures appeared to permit no more accurate distribution of certioraris than a rough 50 percent within Cook County, and 50 percent outside, or 236 certioraris in each group for the four years.

Since the hearing of a certiorari requires no jury, the court expenses may be classified as the salaries of judges, of clerks, and of bailiffs, Clerks, however, are supplied by the office of the Clerk of the District Court. An examination of the financial statements of the Circuit Court Clerks for Champaign County and Cook County showed that both offices pay for themselves by fees collected. In Workmen's Compensation cases, clerks' fees are normally defrayed by attorneys for claimants out of their gross attorney fees. Hence the clerks' expense has been already allowed for.

The bailiff's expense is more problematic, since it appears that a bailiff has little or nothing to do in a certiorari hearing, and is often dispensed with. In the opinion of one Court Clerk, the profit returned to the County by the Clerk's office is adequate to cover the bailiff expense. No allowance has been made for bailiffs' services.

In allocating judges' salaries, a distinction had to be drawn between Cook County and down-state counties. It appears that a certiorari requires much more time in the latter areas. One downstate judge estimated that an entire day would be consumed by hearing and decision of a certiorari, out of a total of 250 working days a year. Since the salary of a judge in his circuit in the years in question would have been $12,500, we estimated $50 as the cost in his court of a certiorari, in 1946-1949. The other down-state judge, serving in an extended circuit, estimated an average of 2/3 of a day to dispose of a certiorari, while his working days were reduced by the size of his circuit to about 200, yielding a cost per certiorari in his circuit of $41.67. The average of these two estimates ($45.83) was multiplied by the assumed number of certioraris (236) to arrive at a little less than $11,000 as taxpayers" expense for down-state certioraris in 1946-1949.

In Cook County, it appears that certioraris are decided on oral argument on the motion list. Judge Harry M. Fisher, who has for many years heard the Circuit Court list, estimated that he could dispose of 18 certioraris in any of 200 annual judicial days. The applicable judicial salary being $19,500, estimated taxpayers' expense for 236 certioraris was a little over $1000. The total of the downstate and Cook County figures gives the Circuit Court expense of $12,000 shown on the table of aggregate costs. While this figure may be subject to a wide relative margin of error, we believe we have fixed it in the right magnitude, and that more accurate information would not significantly change its contribution to total cost.

Table of aggregate costs--including insurance expense

The items in Table 4, with one exception, are the same items shown in Table 3, except for the item of "insurance expense," which here appears for the first time. This substantially increases the total of all costs, and therefore changes the percentage contributions of all items.

"Insurance expense" was calculated in two steps. First, we determined the ratio of "insurance expense incurred" to "claims incurred" in the two companies under observation. Second, we applied this ratio to the aggregate of claims paid in Illinois, 1946-1949, to reach the estimated "insurance expense" for all employers (and their insurers) in those years.

In connection with our determination of the ratio of "insurance expense" to "claims," two points should be explained. First, this ratio was calculated on the basis of incurred claims and expenses, rather than on the basis of paid claims and expenses. The difference is important, because claims are often paid from one to several years later they are incurred, whereas "insurance expenses" tend to be paid at least as soon as the claims are incurred, and sometimes earlier. Production expenses, for example, are paid when the customer pays his premium, which is normally in advance of any loss, and still further in advance of the payment of the loss. In a period of expanding business, and rising price levels, production expense is much higher in relation to the claims paid in the same year than in relation to the claims which actually result from the business produced. The same is probably true of other elements of insurance expense. In companies A and B, for example, "insurance expense paid" was equal to 91.8 per cent of "claims paid," while "insurance expense incurred" was only 60.4 percent of "claims incurred."

The "incurred" basis of calculation does not wholly eliminate time lag, but is the best basis readily available. It is, for example, the basis on which comparative figures for different companies are assembled and presented by the National Bureau of Casualty Underwriters.

The other point to be explained relates to the kinds of claims used. The expense ratio was calculated on the total of claims for both cash benefits and medical benefits. This was done because we assume that insurance companies spend just as much money in collecting and handling funds to be spent for medical benefits as funds spent for cash benefits. Our procedure here contrasts with our procedure in relation to claims expense, which we believe to be spent almost wholly in connection with cash benefits.

A summary of the calculations follows, with the 1949 "Insurance Expense Exhibit" of the National Bureau of Casualty Underwriters supplied in the last column for comparison.

Table A-48. Calculation of Insurance Expense Ratio

Line No.		Companies A and B			National Bureau	
		Col. 1 ($000)	Col. 2 ($000)	Col. 3 (%)	Col. 4 (%)	Col. 5 (%)
1	Claims incurred (medical and cash)		40,614	56.8		52.4
2	Claims expense incurred		6,264	8.8		8.1
3	Insurance expenses					
4	Production	11,846		16.6	17.0	
5	Inspection and Bureau	1,636		2.3	8.8	
6	Administration and Audit	6,068		8.5		
7	Taxes, licenses and fees	2,141		3.0	3.7	
8	Profit and contingencies	2,850		4.0	10.0	
9	Total insurance expenses		24,541	34.4		39.5
10	Total cost of insurance		71,419	100.0		100.0
11	Ratio of "insurance expense" to claims incurred (line 9 ÷ line 1)			60.4262		75.4

Persons interested in the bias of our figures will be interested in noting that our two companies showed a considerably lower ratio of expense to claims than the wider group studies by the National Bureau, although the item of claims expense is somewhat higher. The main difference between the two sets of figures is the higher profit realized by the National Bureau group.

Having determined the ratio of insurance expense to claims from the experience of Companies A and B, we applied this ratio to claims paid under the Illinois Workmen's Compensation Act to determine the presumed insurance expense which would be allocable to all such claims if all were covered by insurance. This calculation is shown in Table A-49, below.

Table A-49. Calculation of Insurance Expense Allocable to Cash Benefits under Illinois Workmen's Compensation

Line No.		
1.	Gross pay-outs under Illinois W.C.A., 1946-1949 (from Table A-40)	$59,253,000
2.	Ratio of insurance expense to gross pay-outs (from Table A-48, line 11)	60.4262%
3.	Insurance expense allocable to Illinois pay-outs (line 2 times line 1)	$35,804,000

The amount shown in line 3 of Table A-49 is the amount appearing as "insurance expense" in Table 4, line 7, in the text of the report.

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